

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G & A' BENCH
MUMBAI**

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3143/Mum/2017
(Assessment Year : 2012-13)**

&

**ITA No.3144/Mum/2017
(Assessment Year: 2012-13)**

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Sanathnagar Enterprises Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AAACB8317J		
(Appellant)	..	(Respondent)

**ITA No.3147/Mum/2017
(Assessment Year : 2007-08)**

&

**ITA No.3148/Mum/2017
(Assessment Year: 2007-08)**

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Ajitnath Hi-Tech Builders Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AAGCA1122Q		
(Appellant)	..	(Respondent)

**ITA No.7134/Mum/2016
(Assessment Year : 2008-09)**

&

**ITA No.7135/Mum/2016
(Assessment Year: 2008-09)**

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road,	Vs.	M/s. Lodha Glowing Construction Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E.
---	-----	--

Mumbai – 400 020		Moses Road, Worli Mumbai-400 018
PAN/GIR No.AABCL2636B		
(Appellant)	..	(Respondent)

ITA No.7142/Mum/2016 to 7145/Mum/2016
(Assessment Year : 2007-08 & 2008-09)

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Lodha Properties Developments Pvt.Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AABCL2222K		
(Appellant)	..	(Respondent)

ITA No.7146/Mum/2016 to 7149/Mum/2016
(Assessment Year : 2010-11 & 2011-12)

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Lodha Hi Rise Builders Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AABCL2637A		
(Appellant)	..	(Respondent)

CO No.11/Mum/2019 & 12/Mum/2019
(Arising out of ITA No.7146/Mum/2016 &
7147/Mum/2016)
(Assessment Year : 2010-11)

M/s. Lodha Hi Rise Builders Pvt. Ltd., 412, 17G, Vardhaman Chamber, Cawasjee Patel Street, Fort, Mumbai – 400 001	Vs.	DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020
PAN/GIR No.AABCL2637A		
(Appellant)	..	(Respondent)

**ITA No.7136/Mum/2016 & 7137/Mum/2016
(Assessment Year : 2010-11)**

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Lodha Builders Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AABCL1722F		
(Appellant)	..	(Respondent)

**CO No.5/Mum/2019 & 6/Mum/2019
(Arising out of ITA No.7136/Mum/2016 &
7137/Mum/2016)
(Assessment Year : 2010-11)**

M/s. Lodha Builders Pvt. Ltd., 412, 17G, Vardhaman Chamber Cawasjee Patel Street Fort, Mumbai-400001	Vs.	DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020
PAN/GIR No.AABCL1722F		
(Appellant)	..	(Respondent)

**ITA No.7138/Mum/2016 & 7139/Mum/2016
(Assessment Year : 2010-11)**

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

**CO No.7/Mum/2019 & 8/Mum/2019
(Arising out of ITA No.7138/Mum/2016 &
7139/Mum/2016)
(Assessment Year : 2010-11)**

M/s. Lodha Home Developers Pvt. Ltd.,	Vs.	DCIT.Cent.Cir-7(3) Room No.655,
--	-----	------------------------------------

(Now merged with Shree Sainath Enterprises Construction and Developers Pvt. Ltd., 412, 17G, Vardhaman Chamber Cawasjee Patel Street Fort, Mumbai – 400 001		6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020
PAN/GIR No.AABCL2209G		
(Appellant)	..	(Respondent)

**ITA No.7140/Mum/2016 & 7141/Mum/2016
(Assessment Year : 2010-11)**

DCIT.Cent.Cir-7(3) Room No.655, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Aasthavinayak Real Estate Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli Mumbai-400 018
PAN/GIR No.AAGCA2863C		
(Appellant)	..	(Respondent)

**CO No.13/Mum/2019 & 14/Mum/2019
(Arising out of ITA No.7140/Mum/2016 & 7141/Mum/2016)
(Assessment Year : 2010-11)**

M/s. Lodha Developers Ltd., (Since Ashthavinayak Real Estate Pvt. Ltd., is now merged with Lodha Developers Ltd.,) 412, 17G, Vardhaman Chamber, Cawasjee Patel Street, Fort, Mumbai-400 001	Vs.	DCIT.Cent.Cir-7(3) Room No.654, 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020
PAN/GIR No. AAGCA2863C		
(Appellant)	..	(Respondent)

Revenue by	Shri Prakash Chhotaray
Assessee by	Shri Anuj Kisnadwala
Date of Hearing	21/06/2021 & 18/10/2021
Date of Pronouncement	17/12 /2021

आदेश / ORDER

PER BENCH:

ITA No.3143/Mum/2017 & 3144/Mum2017 (A.Y.2012-13)

These appeals in ITA Nos.3143/Mum/2017 & 3144/Mum/2017 for A.Y.2012-13 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-199 & 198/2015-16 dated 08/02/2017 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.3147/Mum/2017 & 3148/Mum/2017 (A.Y.2007-08)

These appeals in ITA Nos.3147/Mum/2017 & 3148/Mum/2017 for A.Y.2007-08 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-191, 192 & 267, 266/2015-16 dated 16/02/2017 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.7134/Mum/2016 & 7135/Mum/2016 (A.Y.2008-09)

These appeals in ITA Nos.7134/Mum/2016 & 7135/Mum/2016 for A.Y.2008-09 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-169 & 168/2015-16 dated 09/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.7142/Mum/2016 to 7145/Mum/2016 (A.Y.2007-08 & 2008-09)

These appeals in ITA Nos.7142/Mum/2016 to 7145/Mum/2016 for A.Yrs.2007-08 & 2008-09 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-164,165,167 & 166/2015-16 dated 16/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA No.7146/Mum/2016 to 7149/Mum/2016 (A.Y.2010-11 & 2011-12)

These appeals in ITA Nos.7146/Mum/2016 to 7149/Mum/2016 for A.Yrs.2010-11 & 2011-12 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-365,364,362 & 363/Addl.CIT, C.R-06/2014-15 dated 13/09/2016 & 09/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

CO No.11/Mum/2019 & 12/Mum/2019 (Arising out of ITA No.7146/Mum/2016 & 7147/Mum/2016) (Assessment Year : 2010-11)

These Cross Objections Nos.11/Mum/2019 & 12/Mum/2019 arising out of ITA Nos.7146/Mum/2016 & 7147/Mum/2016 for A.Yrs.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-362 & 363,/Addl.CIT, C.R-06/2014-15 dated 13/09/2016 & 09/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**ITA No.7136/Mum/2016 & 7137/Mum/2016
(Assessment Year : 2010-11)**

These appeals in ITA Nos.7136/Mum/2016 to 7137/Mum/2016 for A.Yrs.2010-11 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-353 & 352/Addl.CIT, C.R-06/2014-15 dated 08/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**CO No.5/Mum/2019 & 6/Mum/2019 (Arising out of ITA
No.7136/Mum/2016 & 7137/Mum/2016) (Assessment
Year : 2010-11)**

These Cross Objections Nos.5/Mum/2019 & 6/Mum/2019 arising out of ITA Nos.7136/Mum/2016 & 7137/Mum/2016 for A.Yrs.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No. CIT(A)-48/IT-353 & 352/Addl.CIT, C.R-06/2014-15 dated 08/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**ITA No.7138/Mum/2016 & 7139/Mum/2016
(Assessment Year : 2010-11)**

These appeals in ITA Nos.7138/Mum/2016 to 7139/Mum/2016 for A.Yrs.2010-11 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-366 & 367/Addl.CIT, C.R-06/2014-15 dated 14/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**CO No.7/Mum/2019 & 8/Mum/2019 (Arising out of ITA
No.7138/Mum/2016 & 7139/Mum/2016) (Assessment
Year : 2010-11)**

These Cross Objections Nos.7/Mum/2019 & 8/Mum/2019 arising out of ITA Nos.7138/Mum/2016 & 7139/Mum/2016 for A.Yrs.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No. CIT(A)-48/IT-366 & 367/Addl.CIT, C.R-06/2014-15 dated 14/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**ITA No.7140/Mum/2016 & 7141/Mum/2016 (Assessment
Year : 2010-11)**

These appeals in ITA Nos.7140/Mum/2016 to 7141/Mum/2016 for A.Yrs.2010-11 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/IT-349 & 348/Addl.CIT, C.R-06/2014-15 dated 07/09/2016 (Id. CIT(A) in short) in

the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

**CO No.13/Mum/2019 & 14/Mum/2019 (Arising out of
ITA No.7140/Mum/2016 & 7141/Mum/2016)
(Assessment Year : 2010-11)**

These Cross Objections Nos.13/Mum/2019 & 14/Mum/2019 arising out of ITA Nos.7140/Mum/2016 & 7141/Mum/2016 for A.Yrs.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No. CIT(A)-48/IT-349 & 348/Addl.CIT, C.R-06/2014-15 dated 07/09/2016 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961 (hereinafter referred to as Act).

ITA NOS.3143/Mum/2017 & 3144/Mum/2017 (Revenue Appeal)

2. The only effective issue involved in these appeals of the Revenue is as to whether the Id. CIT(A) was justified in deleting the levy of penalty u/s.271D and 271E of the Act in the facts and circumstances of the instant case.

3. The brief facts of this appeal are that the assessee is belonging to Lodha Group engaged in the business of land development and construction of real estate properties. Lodha Developers Ltd., is a parent holding company which has further subsidiaries and step down subsidiaries. The return of income for the A.Y.2012-13 was filed by the assessee company electronically on 20/09/2012 declaring loss of Rs.3,47,72,412/-. The assessment was completed u/s.143(3) of the Act on 30/03/2015 arising loss of Rs.2,40,39,770/- under normal provisions of

the Act and determining book profit of Rs.12,01,52,290/- u/s.115JB of the Act. Thereafter, a reference for consideration of penalty u/s.271D and 271E of the Act was made to the Id. Additional CIT, Central Range-7 from Id. DCIT, Central Circle 7(3) through letter dated 25/06/2015 intimating that assessee has accepted loans / deposits from various sister concerns through journal entries and had repaid loans to various sister concerns through journal entries as according to Id. DCIT, the same were in violation of provisions of Section 269SS and 269T of the Act. The total of acceptance of loan entries / deposits otherwise than by way of account payee cheque / account payee draft and transacted through journal entries are as under:-

Sl. No.	Name of the sister concerns	Credits (Rs.)
1	Lodha Developers Ltd.,	17,69,41,354
2	Siddhnath Residential Paradise Pvt. Ltd.,	5,13,58,339
	Total	22,82,99,693

3.1. Similarly, the details of transactions which are repayment of loans / deposits to various sister concerns otherwise than by way of account payee cheque / account payee draft and transacted through journal entries are as under:-

Sl. No.	Name of the sister concerns	Debits (Rs.)
1	Lodha Developers Ltd.,	4,06,24,252
2	Siddhnath Residential Paradise Pvt. Ltd.,	18,92,42,868

	Total	22,98,67,120
--	--------------	---------------------

3.2. Accordingly, a show-cause notice issued to the assessee by the Id. AO on 03/07/2015 in which assessee company was asked to explain as to why the penalty u/s.271D and 271E of the Act should not be levied in respect of the aforesaid figures. The assessee filed a reply on 13/07/2015 by stating that the journal entries pointed out by the Id. Assessing Officer is not loan or deposit of money and since it does not involve any money, the provisions of Section 269SS and 269T are not attracted. The assessee did give explanation about the nature of transactions together with the purpose of passing the journal entries before the Id. Addl CIT as well as before the Id. DCIT in quantum assessment proceedings. The assessee placed reliance on the decision of Mumbai Tribunal and decision of the Hon'ble Delhi High Court in support of its contentions. The Addl. CIT however, relied on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Triumph International Finance India Ltd., dated 12/06/2012 reported in 345 ITR 270 wherein loan / deposits has been repaid by debiting the account through journal entries, it must be held that the assessee had contravened the provisions of Section 269T of the Act. The Addl. CIT also observed that the case before the Hon'ble Bombay High Court in Triumph International Finance (I) Ltd., involved transaction with one party and accordingly, it was held that it would be an empty formality to pay and accept by account payee cheque the same amount. The Addl. CIT observed that in the instant case, the assessee has not shown that transaction is with the same party and hence, it is not a simple case of squaring up of mutual extinguishment of liabilities which can be done by passing journal entries. With regard to yet another argument advanced by the assessee before the Id. Additional CIT that

there is no unaccounted cash flowing among the group entities in respect of these journal entries, the Id. Addl. CIT observed that there is a search and seizure operation u/s.132 of the Act on the Lodha Group of cases on 10/01/2011 and that the said group had made disclosure before the Hon'ble Income Tax Settlement Commission, Mumbai on account of undisclosed income arising out of transactions with various group entities which are also subject matter of investigation pursuant to directions of Hon'ble Income Tax Settlement Commission. Hence, the Id. Addl. CIT observed that it cannot be ruled out that the entities through whom such repayment / acceptance are done are not a part of chain of entities involved in the transaction for the purpose of tax evasion. With these observations, the Id. Addl. CIT held that assessee had violated the provisions of Section 269SS and Section 269T of the Act and proceeded to levy penalty u/s.271D and 271E of the Act respectively.

3.3. The assessee pleaded before the Id. CIT(A) that during the course of original scrutiny assessment proceedings, the entire transactions with the group entities were subject matter of verification by the Id. AO and no infirmity was found thereon, either on its business purposes or on its genuineness. All those transactions were accepted in toto by the Id. AO in the original quantum scrutiny assessment proceedings and no additions were made thereon. The assessee pointed out that the journal entries were passed in the normal course of its business for mutual extinguishment of liabilities. The assessee drew the attention of the Id. CIT(A) on the CBDT Circular No.387 dated 06/07/1984 more particularly to para 32.1 and 32.2 thereon, wherein the purpose behind introduction of Section 269SS and 269T were explained by the CBDT. It was specifically pleaded that absolutely no false explanation has been given by the assessee in respect of the journal entries and there are no false

entries in the books of accounts of the assessee. There is absolutely no flow of unaccounted money flowing among the group entities in respect of these journal entries. There was no receipt of any loan / deposit or repayment in any other mode other than by account payee cheque or account payee draft. The journal entries are passed only to facilitate assignment of debts by one group entity to another group entity. The Id.AO in these quantum scrutiny proceedings had not made any observation that the transactions passed through journal entries are not out of business exigencies or were done with a motive to evade tax. The assessee also placed reliance on the decision of Co-ordinate Bench of Cochin Tribunal in case of Muthoot M George Brothers reported in 46 ITD 10 wherein the Tribunal had held that simply transferring of funds between sister concerns where the decision to give and take rests with the same group or the individual do not partake the nature of loan / deposit. The assessee also pleaded that a rational interpretation should be given to the provisions of Section 269SS and 269T of the Act and not literal interpretation. It was pointed out that literal interpretation of the provisions will hit a bonafide transaction which was not the intention behind enactment of the section as it is clear from the CBDT Circular No.387 dated 06/07/1984. It was submitted that where the literal construction would defeat the obvious intention of the legislation and produce a wholly unreasonable result, the Court must interpret so as to achieve that obvious intention and produce a rational construction. Reliance in this regard was also placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Naga Hills Tea Co. Ltd., reported in 89 ITR 236 wherein the Hon'ble Apex Court had observed "if the interpretation of fiscal enactment is open to doubt, the construction most beneficial to the subject should be adopted." The assessee also placed reliance on the Co-ordinate Bench decision of the Delhi Tribunal in the

case of Dinesh Jain in ITA No.3597/D/2013 wherein the Tribunal upheld the order of the Id. CIT(A) which stated that the penalty was time barred by limitation u/s.275(1)(c) of the Act and that the provisions of Section 269SS of the Act are not attracted, in case of assigning of liabilities on the journal entries. In that case, the loan was assigned by that assessee to his wife by way of journal entry. It was pointed out that the department did not even challenge this decision on merits and only contested the limitation aspect before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court upheld the Tribunal decision vide its order in ITA N.751/D/2014. The department further carried this matter by way of Special Leave Petition (SLP) before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that while rejecting the SLP that "since on merit, it has been found that there is no penalty, this SLP is dismissed, however, leaving the question of law on limitation open."

3.4. The assessee without prejudice to the aforesaid arguments also submitted that at the time of passing of journal entries, the assessee company was of bonafide belief that creation or assignment of debt or squaring off of receivables / payables among the group entities / affiliate companies do not violate the provisions of Section 269SS and 269T of the Act. The assessee also placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Noida Toll Bridge Co. Ltd., reported in 139 Taxman 115 which was not even challenged by the department before the Hon'ble Supreme Court. Hence, the assessee's conduct was well within the law prevailing at the time of passing of journal entries. The assessee also placed reliance on various Tribunal decisions from Ahmedabad, Pune, Lucknow, Agra and Mumbai Tribunal in support of its contentions. The assessee also placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Triumph

International Finance reported in 345 ITR 270 wherein the Hon'ble Jurisdictional High Court had explained the expression "reasonable cause" within the meaning of Section 273B of the Act for non-imposition of penalty u/s.271E of the Act, would have to be construed liberally depending upon the facts of each case. The assessee explained that there existed a reasonable cause on the following counts:-

- a) There existed genuine liability to receive / repay the amount by the assessee.
- b) It would have been a mere empty formality to repay loan / deposit amount by account payee cheque / draft and receive back almost the same amount.
- c) Genuineness of transactions through book entries carried out in the books in the ordinary course of business has been doubted in the regular assessment.
- d) There is nothing on record to suggest that the amount advanced by the lender to the assessee are amounts repaid by the assessee to the lender represented unaccounted money.
- e) It is not in dispute that settling the claim by passing journal entry in the respective books is also one of the recognised mode of loan / deposit.

3.6. The assessee by placing reliance on various decisions relied upon hereinabove submitted that either in the assessment order or in the penalty order the following should be specified:-

- (i) The genuineness of the transactions should be doubted
- (ii) Unaccounted income of either the depositor or receiver should be involved in the transaction.

(iii) There has to be a finding that the transactions were meant to evade tax.

(iv) There has to be a finding that the transaction is not bonafide.

3.6.1. The assessee submitted that the Id. Addl. CIT had tried to circumvent conditions by misinterpreting the judgment of the Hon'ble Bombay High Court in the case of Triumph International referred to supra by stating that "the spirit of Bombay High Court judgment is that only such transactions which are in the nature of squaring up with the same party can only claim the benefit of reasonable cause." It was argued that there is absolutely no such conclusion in the judgement of the Hon'ble Bombay High Court. It was also argued that the Id. Addl. CIT had also tried to circumvent the examination of the aforesaid points by making the observation regarding the disclosure made by the assessee group before the Hon'ble Income Tax Settlement Commission. The assessee submitted that the order of Hon'ble Income Tax Settlement Commission u/s.245D(4) of the Act was passed on 28/11/2014 whereas the penalty order was passed on 28/09/2015 and no investigation pursuant to the order of the Hon'ble Settlement Commission was pending on 28/09/2015. It was pointed that the Id. Addl. CIT had not spelt out the nature of investigation sought to be carried out as per the directions of the Hon'ble Income Tax Settlement Commission and had merely made a vague statement. It was also pointed out that the Id. Addl. CIT while concluding had only stated that "it cannot be ruled out" to justify the levy of penalty. In this regard, the assessee submitted that no stringent penalties should be levied merely on the theory of probability.

3.7. The assessee also pointed out that it had bonafide belief that the transaction passed through journal entries does not attract the provisions

of Section 269 SS and 269T of the Act and that the said journal entries were passed in the normal course of business and assessee had indeed placed reliance on various judicial decisions in support for the same. The assessee also placed reliance on the decision of this Tribunal in the case of sister concern of the assessee group in ITA Nos. 476-481/Mum/2014 for A.Y.2009-10 dated 27/06/2014 in the case of Lodha Builders Pvt. Ltd., vs ACIT wherein this Tribunal had deleted levy of penalty u/s.271D and 271E of the Act by stating that assessee had reasonable cause in terms of Section 273B of the Act on the similar set of transactions. Infact, in para 34 of the said order, Mumbai Tribunal had held as under:-

"The causes shown by the assessee for receiving or repayment of the loan/deposit otherwise than by account-payee cheque/bank draft, was on account of the following, namely; alternate mode of raising funds; assignment of receivables; squaring up transactions; operational efficiencies/MIS purpose; consolidation of family member debts; correction of errors; and loans taken in case. In our opinion, all these reasons are, prima facie, commercial in nature and they cannot be described as non-business by any means. Further, we ask ourselves as to why should the assessee under consideration take up issuing number of account payee cheques/bank drafts which can be accounted by the journal entries. This being the Spirit of Hon'ble High Court of Bombay, we adopt the same to the present issue. Further, in para 35 of this order the Hon'ble ITAT says in the language of the -Hon'ble High Court, the said 'journal entries' constitute one of the recognized modes of recording the loan/deposit. The commercial nature and occurrence of these transactions by way of journal entries is in the normal course of business operation of the group concerns. In this regard, there is no adverse finding by the AO in the regular assessment. AO has not made out in the -assessment that any of the impugned transactions is aimed at noncommercial reasons and outside the normal business' operations."

3.8. The assessee also stated that the facts prevailing in the instant case are identical with the facts of the assessee company as each of the transactions passed through journal entries would fall in one of the seven categories cited below. For the sake of convenience, the details of 7 categories are mentioned as under:-

- i. Alternate mode of raising funds
- ii. Assignment of receivables
- iii. Squaring up transactions
- iv. Operational efficiencies / MIS purpose
- v. Consolidation of family member debts
- vi. Correction of errors; and
- vii. Loans taken in cash

3.9. Therefore, it was pleaded that the assessee's case is clearly covered by reasonable cause within the meaning of Section 273B of the Act and hence, there cannot be any levy of penalty u/s.271D and 271E of the Act.

3.10. The Id. CIT(A) went through the journal entries passed by the assessee and found that those journal entries were passed in the normal course of business of the assessee and in a bonafide manner by giving a categorical finding that all the transactions passed thereon are genuine and there was absolutely no malafide intention to evade payment of taxes there on. The Id. CIT(A) by giving a detailed observation in this regard and by placing reliance on various decisions, deleted the levy of penalty. Aggrieved the Revenue is in appeal before us.

4. The Id. Special Counsel for the Revenue filed detailed written submissions and took us to the each part of his written submissions at the time of advancing his arguments vehemently. The gist of the various arguments advanced by the Id. DR are captured hereinbelow:-

- The assessee before the Id. AO submitted a general explanation that the journal entries were passed
 - to avoid the delay in procedural hassles of preparing cheques and obtaining signature of authorized person,

- to avoid temporary arrangement of funds for clearance of cheques,
- for earlier settlement of transactions as settlement of these transactions through banking channels results in avoidable delay of 3-5 days besides blocking huge funds for temporary period without any commercial gain
- for squaring off and consolidation of receivable and payable,
- operational efficiency, ease of MIS
- for business exigencies to clear the transactions expeditiously and without any commercial loan.

It was further submitted that:

- All journal entries are genuine with corresponding journal entries in books of sister concerns.
 - At no point of time there was any cash transaction with the sister concerns.
 - The transactions have ultimately settled through banking channels.
 - All sister concerns are having PAN and are filing tax returns.
 - There is no avoidance of tax liability by transaction through journal entries.
 - There is no loss of revenue.
- In the 3CD report on compliance with the provisions of sections 269SS and 269T the auditors have made the following observations:

Note: 1. Wherever amounts are given and received back by cheque/bank draft, it is not possible for tax auditors to verify whether loans & deposits have been taken or accepted/repaid otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee.

2. Amount repaid /accepted in certain cases are by way of transfer of liabilities by accounting entries.

- These observations of the auditors show that the correctness of the accounts on this issue has not been certified by the auditors and the same is contrary to the claim of the assessee.
- The Id. Addl. CIT followed the judgment of the Hon'ble Bombay High Court in the case of CIT v. Triumph International Finance

(India) Ltd dated 12.06.2012 [2012] 345 ITR 270 (Bom) and held that there has been contraventions of the provisions of 269SS and 269T of the Act. He quoted from the judgment to highlight that the section does not make any distinction between bona fide and non-bona fide transactions. He also relied on the judgment of the Hon'ble ITAT "F" Bench, Mumbai in the case of V.N. Parekh Securities v. ACIT, Central Circle 40, ITA Nos.6082 & 6083/Mumbai dated 16.08.2013 where it has been held that there can be no deletion of penalty if simply there is a receipt of loan or repayment of loan through journal entries. Each and every case is required to be considered as to whether there was some reasonable cause in accepting such loans or repaying loans through journal entries.

- The Id. Addl. CIT held that there was no reasonable cause for the default. He distinguished the facts of the case in the case of CIT v. Triumph International Finance (India) Limited (supra) observing that in that case the transactions involved the same party and the Hon'ble High Court observed that it would have been an empty formality to pay and receive back the same amount by cheque from the same party. Hence, it was held that there was reasonable cause.
- On the averment of the assessee that there was no unaccounted flow of cash among the group entities, the Additional Commissioner noted that the assessee group has made a disclosure before the Settlement Commission, Mumbai of undisclosed income arising out of transactions with group concerns. Hence it cannot be ruled out that the entities through whom such repayment/acceptances are done are not part of a chain of entities involved in transaction for the purpose of tax evasion.
- Accordingly the Additional Commissioner imposed penalty of Rs.22,82,99,693/- u/s 271D and Rs.22,98,67,120/- u/s 271E of the Act.
- The CIT(A) held that the assessee has violated the provisions of section 269SS and 269T by undertaking the transactions of accepting and repayment of loans/deposits through journal entries. However, the CIT(A) deleted the penalty on the ground that there was reasonable cause for making the transactions through journal

entries. It is appropriate to deal with some observations of the CIT(A) which are certainly not correct:-

- The CIT(A) has observed "In the assessee's case, the genuineness of the transactions made through journal entries is not in doubt and it has not been shown either in the assessment proceedings or in penalty proceedings that unaccounted income of the lender or the borrower was involved. In this connection, the observations of the CIT(A) are completely misconceived. First, as rightly held by the Hon'ble Bombay High Court in Triumph International Finance (India) 12.06.2012, it is immaterial whether the transactions are bona fide or not bonafide so far as applicability of the provisions of 269SS or 269T are concerned. These are mandatory provisions and have to be followed. Secondly, the number of transactions are high. It is humanly impossible for the Assessing Officer to investigate each transaction. In fact, to counter such tendencies of tax evasion, accepting/repaying loans/deposits through account payee cheques/bank drafts became mandatory by introducing the relevant provisions so that a screening of the prima facie bona fide transactions could have been effected making the task of the Assessing Officer easy. But the assessee violated the mandatory provision of law by not doing the transaction through the banking channel and by that act denied the Assessing Officer the instrument provided by law to investigate and find out the non-genuine transactions. Thus, the assessee is taking advantage of its own wrong. So, it is incorrect to say that the genuineness of the transactions is not in doubt, when this aspect has not been examined by the Assessing Officer. As regards application to the Settlement Commission, it is elementary that one can approach the Settlement Commission, only if it makes additional disclosure of income not disclosed before the Assessing Officer to avoid penalty and prosecution. Hence the very fact that the group has approached the Settlement Commission presupposes existence of concealment. The CIT(A) failed to appreciate this basic fact.
- What is most important, as has been pointed out above, the auditors have not been able to certify the correctness of the accounts on this issue because the materials were not furnished to them. Because of this observation of the auditors, the accounts are not reliable.

- There was some discrepancies in the tax audit report which was tabulated in page 8 of the written submissions of the Id. Special Counsel for the Revenue and accordingly, he pleaded that the entire matter should go back to the file of the Id. AO and assessee may be directed to get the accounts audited and furnished the audit report on the limited issue of compliance with the provisions of Section 269SS and 269T of the Act and the issue of reasonable cause u/s.273B of the Act.
- Reliance was placed by the Id. Special Counsel for the Revenue on the Special Bench decision of Mumbai Tribunal in the case of Deepak Sales and Properties Pvt. Ltd., vs Addl.CIT reported in 95 Taxmann.com 166 wherein it was held as under:-

“18. There is no dispute between the parties that bona fide nature of transaction alone would not be sufficient to escape the clutches of sec.271D of the Act. As per the decision rendered by Hon’ble Supreme Court in the case of Kum. A. B. Shanti (supra), it is required to be established that there was some bona fide reasons for the assessee for not taking or accepting loan or deposit by account payee cheque or account payee bank draft, so that the provisions of section 273B of the Act will come to the help of the assessee. Only in such cases, the AO is precluded from levying penalty u/s 271D of the Act. The Id. A R took support of Explanatory note given while introducing the provisions of sec. 269SS of the Act. However, the Hon’ble Supreme Court has rendered its decision in the case of Kum. A. B. Shanthi (supra) after considering the same and has expressed the view extracted above. In the case of Triumph International Finance (I) Ltd. [2012] 345 ITR 270, also, the Hon’ble Bombay High Court has deleted the penalty only on the ground of existence of reasonable cause.”

- By placing reliance on the aforesaid decision, the Id. Special Counsel for the Revenue argued that only way of escaping penalty is that the assessee has to prove reasonable cause and this is question of fact. Each case has to be decided on the fact of the case and there cannot be any covered matter.
- Reliance was also placed on the decision of the Hon’ble Jurisdictional High Court in the case of Triumph International Finance (I) Ltd., reported in 345 ITR 270 wherein it was observed as under:-

(a) When loan/ deposit has been repaid by debiting accounts through journal entries, it was held that the assessee has contravened the provisions of section 271T of the Act. However, the Hon'ble High Court gave relief holding that there was reasonable cause for the default.

(b) The assessee had accepted Rs.4,29,04,722/- as and by way of inter-corporate deposit from Investment Trust of India which was repayable during the impugned assessment year 2003-04. During the relevant previous year the assessee had transferred shares worth Rs.4,28,99,325/- to Investment Trust of India. Thus, in the assessment year in question, the assessee was liable to repay the loan/ inter-corporate deposit amounting to Rs.429,04,722/- to the Investment Trust of India and receive Rs.4,28,99,325/- from Investment Trust of India towards the sale price of the shares. Both the parties agreed that the amounts payable/receivable be set-off in the respective books of account by making journal entries and pay the balance by account payee cheques. After setting off mutual claims through journal entries, the balance amount of Rs. 5397/- due and payable by the assessee to Investment Trust of India was paid by crossed cheque.

(c) The Hon'ble Court observed:

-Para 17-The obligation to repay the deposit by account payee cheque/bank draft for entities specified in section 269T would have to be construed as mandatory in view of the negative language used in the section.

- Para 18- Thus with effect from 1st June 2002, it is mandatory under section 269T of the Act for the persons specified therein to repay any loan/deposit together with interest, if any, exceeding the limits prescribed therein, by account payee cheque/ bank draft and the failure to do so is made liable to penalty u/s 271E of the Act.

- Para 19 - In the present case, it is not in dispute that the assessee has repaid loan/deposit by debiting the account through journal entries. The question is whether such repayment of loan /deposit is in contravention of the modes of repayment set out in section 269T? The argument advanced by the counsel of the assessee, that the bona fide transactions of repayment of loan/deposit by way of adjustment through book entries carried out in the ordinary course of business would not come within the mischief of section 269T, cannot be accepted, because, the section does not make any distinction between the bona fide and non – bona fide transactions and requires the entities specified therein not to make repayment of any loan/deposit together with interest, if any, otherwise than by an account payee cheque/account payee bank draft if the amount of loan/deposit with interest if any exceeds the limit prescribed therein. Similarly, the argument, that only in cases where any loan or deposit is repaid by an outflow of funds, section 269T provides for repayment by an account payee cheque/draft, cannot be accepted because section 269T neither refers to repayment of loan/deposit by outflow of fund nor refers to any other permissible modes of repayment of loan/deposit, but merely puts an embargo on repayment of loan/deposit except by the modes specified therein. Therefore, in the present case, where loan/deposit has been repaid by debiting the account through journal entries, it must be held that the assessee has contravened the provisions of section 269T of the Act.

- Para 24- It would have been an empty formality to repay the loan/deposit by account pay cheque/draft and receive back almost the same amount towards the sale price of shares.

- The Id. Special Counsel for the Revenue argued that in the peculiar facts of the case, it was held by the Hon'ble High Court that there was reasonable cause for the default.
- The only explanation, which is now being given in a number of appeals of this group, is that up to 12th June 2012 when the judgment was delivered by the Hon'ble Bombay High Court in the case of Triumph International Finance (India) Ltd. [2012] 345 ITR 270 (Bom.), the assessee was under the bona fide belief that transactions through journal entries are not hit by the provisions of 269SS and 269T of the Act. This belief was based on some prevailing judicial pronouncements on the issue. The assessee pleaded that this was a reasonable cause for not complying with the provisions of section 269SS and 269T. The assessee relied on the supplementary reasoning given in the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income-tax(central)-4 v. Ajinath Hi-Tech Builders (P) Ltd., ITXA 171 of 2015 and five other appeals dated 6th February 2018 [2018] 92 taxmann.com 228 (Bom,)
- In the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income-tax, Central-4 v. Ajinath Hi-Tech Builders (P) Ltd.(ITXA 171 of 2015 and five other appeals, dated 6th February 2018, [2018], 92, taxmann.com. 228 (Bom.) (supra), the Hon'ble High Court dismissed the appeals of the Revenue on two counts. On merits, it accepted the finding on the facts given by the Hon'ble ITAT that reasonable cause existed in these cases for the failure by the assesseees to comply with the relevant provisions. The Hon'ble High Court observed that the issue of reasonable cause is an inference of facts from facts and, therefore, a question of fact. Therefore, the issue of there being a reasonable cause or not is a question of fact, and unless the order of ITAT is shown to be perverse, the Court would not interfere in the finding of fact given by the ITAT. Thus, according to the Hon'ble High Court, the Hon'ble ITAT had examined the facts and was satisfied about the existence of reasonable cause and the

Hon'ble High Court would not interfere unless the order of the ITAT was shown to be perverse.

- However, even though the decision had already been given in favour of the assessee, towards the end an entirely new alternative argument advanced by the Ld. Counsel of the assessees found favour with the Hon'ble High Court. This argument was that there was reasonable cause for failure to comply with the provisions of section 269SS and 269T if the transactions occurred prior to 12th June 2012, the date of the judgment of the Hon'ble Bombay High Court dated in the case Triumph International Finance (I) Ltd.(supra), as the assessee was under the bona fide belief that transactions through journal entries are not hit by the provisions of 269SS and 269T of the Act.

- This supplementary reasoning given by the Hon'ble High Court toward the end could not be anticipated by the Revenue and there was no discussion on this reasoning in the Court. Now this alternative reasoning of the Hon'ble High Court given in the context of the few appeals before them turned out to be the chief arguments of the ITAT in deleting penalty in all subsequent appeals before it. The analysis of the submissions of the assessees and exercise of probing into the existence of reasonable cause became no longer necessary and the ITAT gave relief in all the appeals of the group across the board where the transactions took place before 12th June 2012, the day of judgment in the case of Triumph International Finance (I) Ltd. (supra) Consequently, to my knowledge, not a single penalty under section 271D and 271E has been sustained on the issue of transaction through journal entries in spite of the significant judgment of the Hon'ble Bombay High Court in the case of M/s Triumph International Finance (I) Ltd. (supra).

5. Per contra, the Id. AR defended each and every argument of the Id. Special Counsel for the Revenue. The gist of various arguments advanced by the Id. AR are as under:-

- With regard to loan discrepancies in the tax audit report and the financial statements of the assessee company as pointed out by the Id. Special Counsel for the Revenue, the Id. AR argued that the Tax Auditor has made only general comments in form 3CD and in either way, the Id. AO had taken due cognizance of the same and had accepted all these transactions to have been entered into in normal course of its business and all those transactions are genuine and bonafide. This is evident from the fact that the Id. AO had not resorted to make any addition in respect of these journal entries in the original scrutiny assessment in the quantum proceedings.
- With regard to disclosure made by the Lodha group of cases before the Hon'ble Tax Settlement Commission, the same were not made for the transactions already entered into books of accounts. A disclosure of Rs.200 Crores was made only for undisclosed income of the group which has got absolutely no relevance for the journal entries already recorded in the books of accounts of the assessee company which represent entries made in the normal course of its business.
- It is a fact that assessee had indeed submitted the entire ledger account containing close to 300 entries which was the subject matter of journal entries and the Id. AO had indeed gone through the same and was apparently satisfied with the same that they were entered in the normal course of business of the assessee. That is the precise reason that the Id. AO did not resort to make any addition or disallowance in respect of those 300 entries. The Id. AO was not able to find any concealment of undisclosed income in respect of those entries. The Id. AR defended the arguments advanced by the Id. Special Counsel for the Revenue that it is not job of the Id. AO to find concealment or undisclosed income. In this regard, he drew the attention of the Bench to the explanatory notes, finance bill which was given while inserting the provisions of Section 269SS and 269T of the Act. The Id. AR also acknowledged the fact that the Id. Special Counsel for the Revenue had indeed accepted that there is no undisclosed income involved in all these transactions. Once there is no undisclosed income involved in all the transactions passed by way of journal entries, how at all the provisions of Section 269SS and 269T of the Act would come into place.

- The Id. AR argued that assessee had also given detailed explanation for each and every transaction and the consolidated list of all those transactions have been considered by the Id. CIT(A) in para 7.2 page 15 in respect of penalty u/s.271D of the Act and para 10 in page 20 in respect of penalty u/s.271E of the Act. These factual findings recorded by the Id. CIT(A) stating that assessee had passed journal entries within the business exigencies, are not controverted by the Id. Special Counsel for the Revenue. Hence, he argued that it is grossly incorrect on the part of the Id. Special Counsel for the Revenue to say that assessee had not given any explanations in respect of transactions passed through journal entries.
- No false explanation was given by the assessee with regard to journal entries passed in its books. The explanation given by the assessee for adjustment of transactions between the group entities were not disputed by the Revenue in the original quantum proceedings. The Id. AR further argued that according to the Id. Special Counsel for the Revenue, the transactions which had been passed through only regular banking channels are genuine and bonafide. This argument cannot be accepted at all in as much as bonafide transactions passed through journal entries would also be genuine. He vehemently argued that no entity in this world could survive without passing of journal entries in its books of accounts.
- With regard to the observation made by the Special Bench of Mumbai Tribunal in the case of Deepak Sales and Properties Pvt. Ltd., reported in 95 Taxmann.com 166, the Id. AR drew the attention to para 18 of that judgment wherein both the parties in that case had agreed that bonafide nature of transactions alone would not be sufficient to attract the clutches of Section 271D of the Act. Accordingly, he stated that it is more of a concession given by the parties in that case and hence, the same would lose its precedence value. He also drew our attention to para 22 of the said Special Bench decision wherein there was a categorical finding on fact that there was no urgent business necessity for the assessee on both the occasions to accept the loan in cash in that cases and further the assessee had failed to demonstrate that on both the dates, the assessee was not having sufficient funds in its possession. Hence, in that context of

the factual finding, the Special Bench had decided the issue in favour of the Revenue. Hence, the Id. AR vehemently pleaded that the Special Bench is factually distinguishable with that of assessee's case.

- The Id. AR drew the attention of the Bench to the observations made by the Hon'ble Jurisdictional High Court in the case of CIT vs. Ajitnath Hitech Builders Pvt. Ltd., reported in 92 Taxmann.com 228 in para 3 (i) thereon which reads as under:-

“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 have a reasonable cause u/s.273B of the Act for non-imposition of penalty u/s.271D of the Act”

- The Id. DR had argued that these observations does not form part of *ratio decidendi* for deciding the issue before them and it represents mere *obiter dicta* of the Hon'ble Jurisdictional High Court. In this regard, the Id. AR submitted that the said observations of the Hon'ble Jurisdictional High Court was the main basis of deciding the issue in favour of the assessee. In any case, the Id AR submitted that *obiter dicta* of the Hon'ble Jurisdictional High Court would be binding on this Tribunal.
- The Id. AR also placed reliance on a table wherein the issue in dispute has been decided in favour of the assessee by various decisions of Mumbai Tribunal as under:-

Sr. No.	Name of Assessee	Appeal No	Assessment Year	Bench	Date of Order
1	Aashthavinayak Estate Company Pvt Ltd	602/Mum/2017	2009-10	H Bench	07.08.2019
2	Galaxy Premises Pvt Ltd	7124/M/16and 7125/M/16	2007-08	G Bench	13.07.2018
3	Galaxy Premises Pvt Ltd	7126/M/16and 7127/M/16	2008-09		
4	Galaxy Premises Pvt Ltd	7128/M/16and 7129/M/16	2009-10		

5	Jineshwer Real Estate And Farms Pvt Ltd	598/Mum/2017	2012-13	J Bench	26.06.2018
6	Lodha Construction (Dombivli)	139/Mum/2017and 140/Mum/2017	2007-08	A Bench	30.07.2018
7	Lodha Construction (Dombivli}	141/Mum/2017and 142/Mum/2017	2008-09		
8	Lodha Construction (Dombivli)	110/Mum/2017and 111/Mum/2017	2009-10		
9	Lodha Building & Construction Pvt. Ltd	135/Mum/2017	2008-09		
10	Lodha Construction Pvt. Ltd	6602/Mum/2016 and 6604/Mum/2016	2011-12		
11	Lodha Construction Pvt. Ltd	6603/Mum/2016	2010-11		
12	Lodha Facilities Management Ltd	6605/ Mum/ 2016 and 6606/Mum/2016	2011-12		
13	Aashtavinayak Real Estate P.Ltd	6612/Mum/2016	2009-10		
14	National Standard India Ltd	6607/Mum/2016 and 6609/Mum/2016	2011-12	B Bench	06.06.2018
15	Palava Dwellers Pvt. Ltd.	6422/Mum/2016	2012-13	C Bench	15.06.2018
16	Shantinath Designer Construction Pvt Ltd	599/M/17and 600/M/17	2009-10	J Bench	09.07,2018
17	Shantinath Designer Construction Pvt Ltd	606/M/17and 615/M/17	2008-09		
18	Simtools Private Limited	6608/Mum/2016	2011-12	J Bench	09.07.2018
19	Sumangla Developers & Farms Pvt Ltd	438/M/18	2011-12	E Bench	14.06.2019
20	Mahavir Premises Pvt Ltd	125/M/17and 126/M/17	2009-2010	D Bench	23.10.2018
21	Mahavir Premises Pvt Ltd	143/M/17and 144/M/17	2007-2008		
22	Roselabs Finance Limited	131/M/17and 132/M/17	2012-2013	D Bench	23.10.2018
23	Naminath Builders & Farms Pvt Ltd	112/M/17and 113/M/17	2008-2009	B Bench	15.10.2018

24	Naminath Builders & Farms Pvt Ltd	114/M/17and 115/M/17	2009-2010		
25	National Standard India Limited	133/M/17and 134/M/17	2012-2013		
26	Hi Class Buildcon Pvt. Ltd.	1 21 /M/ 17 and 122/M/17	2008-2009	H Bench	26.09.2018
27	Hi Class Buildcon Pvt. Ltd.	123/M/17and 124/M/17	2009-2010		
28	Mahavir Build Estate Pvt. Ltd.	1480/Mum/2017 and 1481 /Mum/ 201 7	2008-2009	D Bench	13.03.2019
29	Sahajanand Hi Tech Construction Pvt Ltd	127/M/17and 128/M/17	2008-2009	J Bench	26.06.2019
30	Sahajanand Hi Tech Construction Pvt Ltd	129/M/17and 130/M/17	2009-2010		
31	Brightgold Construction Pvt. Ltd.	2582/Mum/2017	2012-2013	B Bench	24.07.2019
32	Simtools Private Limited	7123/M/2016	2011-2012	G Bench	13.09.2019
33	Siddhanath Residential Paradise	7130/M/2016& 7132/M/2016	2009-2010		
34	Siddhanath Residential Paradise	7131/M/2016& 7133/M/2016	2008-2009		
35	Lodha Builders Pvt. Ltd. and other companies (39 appeals)	Various	Various	A Bench	31.01.2020
36	Vardhavinayak Township Development Pvt. Ltd.	2576/Mum/2017	2012-2013	F Bench	20.02.2020

- Apart from that, the Id. AR placed reliance on the decision of this Tribunal in the case of DCIT vs. Macrotech Developers Ltd., in ITA No.1415 & 1416/Mum/2018 for A.Y.2013-14 dated 08/04/2021 wherein under similar circumstances, the penalty u/s.271D & 271E was deleted by this Tribunal.

- The Id. Special Counsel for the Revenue argued that the Id AO is not required to examine each of the 300 transactions entered into by the assessee by way of journal entries and certify their genuineness. This would be an impossible job for the Id. AO and this failure to do an

impossible job on the part of the Id. AO should not lead to the presumption that all the transactions are genuine. In this regard, the Id. AR argued that assessee had entered into similar transactions with its group concerns which are listed out independently in those 300 entries by way of journal entries. The assessee had given explanation about the nature of transactions carried out by it before the Id. AO. If the Id. AO finds it impossible to examine the same, then logically no adverse presumption could be drawn on the assessee that the said transactions are not genuine. The assessee had given an explanation in detail covering the broad nature of the transactions carried out by way of journal entries. Those explanations have never been found to be either false or not supported by any evidence. The assessee at best can only provide details before the Id. AO. If those details were chosen not to be examined by the Id. AO terming it to be an impossible task, in the language of the Id. Special Counsel for the Revenue, then why should the assessee be invited with penal proceedings for the very same transactions by presuming that those transactions are not genuine.

- The Id. AR argued that bonafide belief while passing the journal entries was always available with the assessee company and the Id. Special Counsel for the Revenue cannot infer that said bonafide belief of the assessee is wrong. For journal entries passed before 12/06/2012, those entries were passed with a bonafide belief that there was no violation in terms of series of Tribunal decisions that were available in favour of the assessee. In respect of journal entries passed after 12/06/2012, those entries were passed by the assessee only if assessee had a reasonable cause and not otherwise. Hence, in any case, the assessee cannot be invited with the levy of penalty u/s.271D and 271E of the Act.

- With regard to the yet another crucial argument advanced by the Id. Special Counsel for the Revenue is that genuineness of the transactions are not relevant at all. The Id. AR placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Triumph International Finance (I) Ltd., reported in 345 ITR 270 in para 24 of the judgement. Hence, the Id. AR argued that the genuineness of the transactions not doubted by the Revenue has been recognised by the Hon'ble Jurisdictional High Court.

- It is an admitted fact that assessee had furnished the ledger account of Lodha Developers Ltd., and Siddhnath Residential Paradise Pvt. Ltd., for the period 01/04/2011 to 31/03/2012 as appearing in the books of the assessee company containing roughly 300 entries. With regard to the argument advanced by the Id. Special Counsel for the Revenue that it is highly impossible to the Id. AO to examine all these 300 entries, the Id. AR submitted that out of these 300 entries only few entries are journal entries and majority of the transactions are only cheque receipts and cheque payments. The manner of furnishing details and explanations given by the assessee company have been duly accepted by the Id. AO for the said cheque transactions. The Id. AO had not drawn any adverse inference on the entire transactions reflected in the said ledger accounts and had not doubted the genuineness of these transactions in the quantum scrutiny assessment proceedings. Then how can the Id. Addl. CIT draw adverse inference on these transactions and levy penalty u/s.271D and 271E of the Act. He argued that genuineness of these transactions is certainly one of the factors to judge "reasonable cause" within the meaning of Section 273B of the Act.
- The Id. AR pleaded that assessee's case is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Ajinath High-Tech Builders Pvt. Ltd., and others (various sister concerns of the assessee group) dated 06/02/2018 reported in 92 Taxmann.com 228, wherein under similar facts and circumstances in respect of transactions entered though journal entries penalty u/s.271D and 271E of the Act were sought to be deleted by the Hon'ble Jurisdictional High Court on the ground that assessee had sufficient reasonable cause within the meaning of Section 273B of the Act. The Id. AR also placed reliance on yet another decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Lodha Builders Pvt. Ltd., in Income Tax Appeal No.199 of 2015 dated 06/02/2018 in support of the same proposition. The Id. AR also placed on record the evidences wherein the Special Leave petitions (SLP) filed by the Revenue against the aforesaid orders of the Hon'ble Jurisdictional High Court were dismissed by the Hon'ble Supreme Court vide various orders dated 03/12/2018, 10/12/2018, 03/01/2019, 04/01/2019 and 21/01/2019. The Id. AR argued that not even an attempt

has been made by the Id. Special Counsel for the Revenue to point out as to how the aforesaid decisions are not applicable to the facts of the assessee herein.

- The Id. AR argued that the explanations for the nature of transactions which were subject matter of journal entries were indeed examined by the Id. CIT(A) also as they were while forming part of the records before the Id. AO in quantum scrutiny assessment proceedings and before the Id. Addl. CIT before the penalty proceedings. The factual finding given by the Id. CIT(A) on those transactions have not been controverted by the Id. Special Counsel for the Revenue. Hence, he argued that in any case, the argument of the Id. Special Counsel for the Revenue could not be entertained in view of the undisputed facts which remain uncontroverted and in view of the various decisions of the Hon'ble Jurisdictional High Court where SLP of the Revenue has been dismissed by Apex Court as relied upon hereinabove.

6. We have heard rival submissions and perused the materials available on record. We find that the assessee had indeed submitted the ledger account of Lodha Developers Ltd and Siddhnath Residential Paradise Pvt Ltd for the period 1.4.11 to 31.3.12 as appearing in the books of the assessee company, which roughly comprises of 300 entries. Admittedly, these are the transactions which are subject matter of levy of penalty u/s 271D and 271E of the Act by the Id Addl CIT, which is contested before us. Out of the 300 entries, we find that majority of the transactions were carried out only by cheque comprising of cheque receipts and cheque payments. Though the Id. Addl CIT had considered only those transactions which are passed through journal entries for the purpose of levy of penalty u/s 271D and 271E of the Act, we find from the perusal of the ledger accounts, majority of the entries represent regular income tax payments and TDS remittances made by one entity on behalf of another entity which are reflected both in debit as well as in credit side of the

respective ledger accounts (i.e debit entries totaling to 2 and credit entries totaling to 65) ; legal and professional charges incurred by one entity on behalf of another entity which are reflected in credit side of the respective ledger accounts comprising of 4 entries and group company current account transactions reflected in both debit as well as in credit side of the respective ledger accounts (i.e debit entries totaling to 9 and credit entries totaling to 15). Hence effectively the Id Addl CIT should have verified only 24 entries falling in group company current account transactions for the purpose of ascertaining the veracity of the transactions passed through journal entries. We find that these transactions have been duly examined by the Id CIT(A) and had given categorical finding in para 7.2 and para 10 of his order in detail. We find that no false explanations were given by the assessee with regard to journal entries passed in its books. The explanation given by the assessee for adjustment of transactions between the group entities were not disputed by the Revenue in the original quantum proceedings. We find that the Id. Special Counsel for the Revenue argued that transactions through journal entries cannot be held as bonafide and those passed through regular banking channels alone are bonafide. This argument cannot be accepted at all in as much as bonafide transactions passed through journal entries would also be genuine. We cannot remain oblivious of the fact that no entity in this world could survive without passing of journal entries in its books of accounts. Passing of journal entries in the books is one of the recognised modes of recording the accounting entries of the company. We find that the Id CIT(A) had examined the entire details furnished by the assessee company and had concluded that the journal entries had been passed in respect of transactions with group concerns which have been undertaken to assign debt/ receivables, payments on behalf of group concerns for squaring up

transactions and for ease in consolidation of accounts and as a result of these entries, the debt / receivables have gone up or down resulting in taking of loan / repayment of loan. The Id CIT(A) also noted that the assessee had paid interest on loans. These categorical factual findings recorded by the Id CIT(A) are not controverted by the revenue before us. Hence the purpose of passing journal entries together with its business purposes and genuineness stood clearly established in the instant case.

6.1. We also find lot of force in the argument of the Id AR that the genuineness of the transactions passed through journal entries had not been doubted either by the Id. AO in the quantum assessment proceedings or in the penalty proceedings before the Id. Addl CIT. We also find that the purpose behind introduction of provisions of section 269SS and 269T of the Act was to curb black money and false explanations given by the assessee during the course of search. Keeping in mind that intention behind the introduction of provisions of section 269SS and 269T of the Act, which was explained in detail by the CBDT Circular No. 387 dt 06/07/1984, there is absolutely no material on record brought out by the revenue before us that the transactions passed through journal entries in the instant case represent unaccounted income of the lender or the receiver. The transactions through journal entries were reflected in the regular books of accounts maintained by the assessee. Hence the disclosure made by the Lodha group before the Hon'ble Income Tax Settlement Commission would be obviously on account of their undisclosed income and hence the reasoning given by the Id. Addl CIT in this regard in his penalty order which was heavily relied upon by the learned Special Counsel for the Revenue, has no substance and hence rejected. It is not in dispute that the entire transactions through journal entries have been carried out for the purpose of the

business of the assessee company in the normal course of its business. We also find that settling the mutual claims between parties through journal entries is certainly one of the recognized modes of repaying the loan / deposit. There is absolutely no material to suggest that the transactions entered through journal entries were not bonafide transactions. There is nothing on record to suggest that those entries were passed with a malafide intent to evade payment of taxes. In this regard, it would be relevant to reproduce the relevant portion of the judgement of Hon'ble Jurisdictional High Court in the case of CIT vs Triumph International Finance (I) P Ltd reported in 345 ITR 270 (Bom) wherein in para 24 and 25 it was observed as under:-

“24. In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account-payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an empty formality to repay the loan/deposit amount by account-payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee. The fact that the assessee company belongs to the Ketan Parekh Group which is involved in the securities scam cannot be a ground for sustaining penalty imposed under Section 271E of the Act if reasonable cause is shown by the assessee for failing to comply with the provisions of Section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under Section 271E of the Act deserves acceptance.”

25. In the result, we hold that the Tribunal was not justified in holding that repayment of loan/deposit through journal entries did not violate the provisions of Section 269T of the Act. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a bonafide transaction and was made with a view to evade tax, we hold that the cause shown by the assessee was a reasonable cause and,

therefore, in view of Section 273B of the Act, no penalty under Section 271E could be imposed for contravening the provisions of Section 269T of the Act.

(emphasis supplied by us)

6.2. With regard to loan discrepancies in the tax audit report and the financial statements of the assessee company as pointed out by the Id. Special Counsel for the Revenue and heavily relied upon him to suggest that the books of accounts of the assessee company are not reliable, we find that the Id. AO had taken due cognizance of the tax audit report and had accepted all these transactions to have been entered into in normal course of its business and accepted all those transactions as genuine and bonafide. This is evident from the fact that the Id. AO had not resorted to make any addition in respect of these journal entries in the original scrutiny assessment in the quantum proceedings. Hence it would be unfair on the part of the Id. Special Counsel for the Revenue to mention those alleged discrepancies at this stage of appeal, which was never disputed by the Id. AO. If there is any grievance left to the department on this, the department should proceed on the assessee company in the manner known to law. A settled issue cannot be reopened or reviewed at an appellate stage , especially when this tribunal does not have any power of enhancement of income. Hence the objections raised in this regard by the Id. Special Counsel for the Revenue are rejected.

6.3. It is pertinent to note that the assessee had given explanations for the total entries found in the ledger accounts of the two parties i.e Lodha Developers Ltd and Siddhnath Residential Paradise Pvt Ltd which contains lot of cheque entries and also minimum journal entries. The explanations offered by the assessee had been duly accepted by the Id. AO (both cheque transactions as well as journal entries) in the original quantum

scrutiny assessment proceedings in as much as he had not resorted to make any additions towards unexplained cash credit or unexplained investments etc in the assessment. This itself goes to prove that assessee had indeed furnished the requisite explanations for the entries in the ledger accounts of two parties. We find that the Id. Addl. CIT had chosen not to analyse the explanations given by the assessee on facts with regard to the journal entries. Whereas the entries were duly examined and analysed by the Id CIT(A) in para 7.2. page 15 for section 271D penalty and in para 10 page 20 for section 271E penalty. We find that the Id CIT(A) had categorically recorded a finding of fact explaining the nature of these entries, which remain uncontroverted before us.

6.4. We find lot of force in the argument advanced by the Id. AR that the assessee indeed entertained bonafide belief while passing the journal entries. For journal entries passed before 12/06/2012, those entries were passed with a bonafide belief that there was no violation of provisions of section 269SS and 269T of the Act in view of series of Tribunal decisions that were available in favour of the assessee. In respect of journal entries passed after 12/06/2012, those entries were passed by the assessee only if assessee had a reasonable cause and not otherwise. Hence, we hold that in any case, the assessee cannot be invited with the levy of penalty u/s.271D and 271E of the Act.

6.5. The reliance placed by the Ld. Special Counsel for the Revenue on the Special Bench decision of Deepak Sales referred to supra is not applicable because of the factual finding recorded therein that the loan was received by that assessee in cash. The factual distinction has been well brought out by the Id AR in his arguments reproduced supra and the same are not reiterated herein for the sake of brevity. Moreover, the

reliance of this special bench decision was also made by the Id DR in the cases before this tribunal earlier and this tribunal having taken due cognizance of the same , had decided the impugned issue before us in favour of the assessee.

6.6. The reliance placed by the Id. Special Counsel for the Revenue on the decision of Mumbai Tribunal in the case of V.N.Parikh Securities Pvt Ltd vs ACIT in ITA No. 6082, 6083/Mum/2009 for Asst Year 2005-06 dated 16/08/2013 is also factually distinguishable in as much as in that case, the assessee could not prove why it was not able to open a fresh bank account and the matter was remanded back to the AO for ascertaining as to whether there existed a reasonable cause. Hence the reliance placed by the Id Special Counsel for the Revenue on this case does not advance the case of the department.

6.7. The Id. Special Counsel for the Revenue strongly relied on the celebrated quote of Justice P N Bhagwati in the case of Distributors Baroda Case which reads as under :-

"To perpetuate an error is no heroism. To rectify the same is the compulsion of judicial conscience."

In this regard, we find that there was absolutely no error in the orders passed by this tribunal earlier which were heavily relied upon by the Id. AR before us. Moreover, some of these tribunal orders were even upheld by the Hon'ble Jurisdictional High Court and SLP preferred by the revenue before the Hon'ble Apex Court had been dismissed. Hence where is the error to perpetuate ? Hence the argument advanced by the Id. Special Counsel for the Revenue deserves to be dismissed.

6.8. We are also inclined to accept the argument advanced by the Id. AR that in respect of compliance to provisions of Section 269SS and 269T of the Act, considering the intention behind introduction of those provisions as explained in detailed by CBDT Circular No.387 dated 06/07/1984, rational interpretation should be given to those provisions and not literal interpretation. We find that the Hon'ble Supreme Court in the case of CIT vs. Naga Hills Tea Co. Ltd., reported in 89 ITR 236 had observed that "if the interpretation of fiscal enactment is open to doubt, the construction most beneficial to the subject should be adopted". This approach if applied and adopted to the facts of the instant case, the obvious conclusion would be the journal entries which had been passed by the assessee company in its books for mutual extinguishment of liabilities between various entities and assignment of debts / receivables from one entity to another entity would not be hit by the provisions of Section 269SS and 269T of the Act as there is sufficient reasonable cause for the same within the meaning of section 273B of the Act.

6.9. We find that the ledger accounts produced by the assessee before the Id. AO in the quantum assessment proceedings and before the Id. Addl. CIT during the penalty proceedings had not raised any doubt in respect of genuineness of the transactions and the transactions being entered into in the normal course of business of the assessee. Hence, it could be safely concluded that those entries were passed out of business exigencies with bonafide belief that they are not in contravention of provisions of Section 269SS and 269T of the Act. It is a well known fact that concealment should always be established and could never be presumed. Assessee was under a bonafide belief that passing of journal entries do not violate provisions of law. This is established by the fact that (i) the plea was taken before the Id. AO in the first instance itself ; (ii)

this has not been disbelieved by the Id. AO ; and (iii) the assessee group has a common set of accountants, chartered accountants and advisors. In the group cases, the Tribunal and Hon'ble High Court has accepted the explanation of bonafide belief of the assessee. With common set of people, it has to be held that the assessee was also under the same belief. In assessee's own case for the immediately preceding assessment year, the Tribunal has accepted that the assessee was under the bonafide belief. In any case, the Id. AO having not disbelieved the explanation nor made any inquiry, the revenue cannot allege contrary at this stage.

6.10. We hold that the revenue is not justified in expecting the assessee to stop passing the journal entries with effect from 12/06/2012. This is for the reason that the Hon'ble Bombay High Court in the case of Triumph International has not declared all the journal entries to be illegal. In fact, journal entries are part and parcel of accrual system of accounting. The Hon'ble Bombay High Court judgement only requires that the assessee needs to establish the reasonable cause for passing the journal entries. We also find that in none of the case of Lodha group, a single penalty has been sustained itself proves the bonafide of the assessee and hence, the reasonable cause. In fact not only, at the Tribunal level, but no penalty has been sustained by the Hon'ble Bombay High Court as well as the Hon'ble Supreme Court by way of dismissal of SLP in the Lodha Group of cases. The liberal interpretation of the provisions of Section 273B is in accordance with the judgement of the Bombay High Court in the case of Triumph International wherein at para 23 of the decision, the High Court observed that "Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is

reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under section 271E would have to be construed liberally depending upon the facts of each case.

6.11. We also find that the observations made by the Hon'ble Jurisdictional High Court in the case of CIT vs. Ajitnath Hitech Builders Pvt. Ltd., reported in 92 Taxmann.com 228 in para 3 (i) thereon would be relevant, which reads as under:-

“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 have a reasonable cause u/s.273B of the Act for non-imposition of penalty u/s.271D of the Act”

6.12. We find that the issue in dispute is squarely covered in favour of the assessee by the various decisions of this tribunal as tabulated supra. The issue in dispute is also covered by the various decisions of Hon'ble Jurisdictional High Court as under:-

- a) CIT vs Triumph International Finance (I) Ltd reported in 345 ITR 270 (Bom)
- b) CIT vs Triumph International Finance (I) Ltd in ITA No. 5745/2010
- c) CIT vs Ajitnath Hi-Tech Builders Private Limited and Others (belonging to the assessee group concerns) reported in 92 taxmann.com 228 (Bom)
- d) CIT vs Lodha Builders Pvt Ltd in ITA No. 199 of 2015 dated 6.2.2018

We find that the SLPs preferred by the revenue against the aforesaid orders have been dismissed by the Hon'ble Supreme Courts vide their orders dated 03/12/2018, 10/12/2018, 03/01/2019, 04/01/2019 and 21/01/2019. When this tribunal in series of decisions had relied upon the

observations of the Hon'ble Jurisdictional High Court and rendered its decision in favour of the assessee, we are unable to persuade ourselves to accept to the arguments advanced by the Id. Special Counsel for the Revenue that tribunal ought not to have relied upon those observations made by the Hon'ble Jurisdictional High Court.

6.13. Hence in view of our detailed observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the assessee had proper reasonable cause within the meaning of section 273B of the Act and hence the transactions passed through journal entries though would be hit by the provisions of sections 269SS and 269T of the Act, since reasonable cause is established in the instant case, the assessee company would get immunity from levy of penalty thereon. Accordingly, the grounds raised by the revenue are dismissed.

7. In the result, both the appeals of the revenue are dismissed.

ITA No.3147/Mum/2017 (Revenue Appeal)

8. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the sister concerns	Amount (Rs.)
1	Lodha Builders Pvt. Ltd.	43,56,85,744
2	Lodha Developers Pvt. Ltd.	16,54,064
3	Lodha Properties Development Pvt. Ltd.	8,40,30,000

	Total	52,13,69,808
--	-------	--------------

8.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that out of the total credits of Rs.43,56,85,744/- in the account of Lodha Builders Pvt. Ltd. (LBPL), the amounts of Rs.13,314/-, Rs.8,40,31,680/- and Rs.16,40,750/- represent assignment of debt, being transfer of credit balance in the account of LDPL in the books of the assessee company to LBPL on 30/09/2006, 30/09/2006 and 31/03/2007 respectively. Further, the amounts of Rs.71,18,243/-. Rs.3,00,00,000/- and Rs.31,28,81,757/- represent on behalf payment, being amount paid by cheque by LBPL to V.R. Somani on behalf of the assessee company, towards acquisition of shares of Shrinivas Cotton Mills Ltd. Further, the credits of Rs.16,54,064/- in the account of LDPL represent various amounts paid by LDPL for expenses, on behalf of the assessee company on various dates and the credit of Rs.840,30,000/- in the account of LPDPL represents the amount paid by the said company for purchase of tenancy rights in Walkeshwar Property, on behalf of the assessee company. These transactions has been categorised as assignment of debt to associate concerns for operational efficiency, on behalf payment transactions. Penalty has been levied U/S.271D, with respect to the above said amounts, It has been submitted that the levy of penalty was not justified since the transactions made through journal entries were bonafide and out of commercial expediency and since there existed reasonable cause u/s.273B of the Act. From the details furnished and submissions made it is noted that the penalty has been levied with respect to journal entries with group concern / associate, which have been undertaken to assign debts and for on behalf payments. As a result of these entries the receivables/debt have gone up resulting in taking of loan. The assessee company has also paid

interest on such loans taken. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.3148/Mum/2017 (A.Y.2007-08) – Revenue Appeal

9. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl.No.	Name of the sister concerns	Amount(Rs.)
1	Lodha Developers Pvt, Ltd.	-
2	Lodha Dwellers Pvt. Ltd.	24,230/-
3.	Lodha Construction (Dombivali)	42,65,800/-
4.	Macrotech Construction Pvt. Ltd.	3,00,000/-
	Total	45,90,030/-

9.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that from the details

filed, it is observed that the debit amounts in the books of the assessee company, on which penalty has been levied u/s.271E include :-

(i) debit entries of various amounts in the account of LCD, made on reversal of the amounts paid as land purchase advance on various dates and on account of assignment of debt, being credit balance in the account of LCD of Rs.5,65,800/-transferred to LDPL on 31.03.2007, resulting in repayment of the loan. The total of such amounts is Rs.42,65,800/-.

(ii) the debit of Rs.3,00,000/- in the account of Macrotech Construction Pvt. Ltd. represents transfer of the amount payable to it by the assessee company to LDPL on 31.03.2007 as a result of which the credit balance is reduced to nil.

(iii) other small debit amounts are similar transactions in the nature of assignment of debt /on behalf payments etc.

9.2. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7134/Mum/2016 (A.Y.2008-09) Revenue Appeal

10. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty

u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sr.No.	Name of the Sister Concerns	Debits (Rs.)	Amount (Rs.)
1	Lodha Developers Private Limited	9,24,925/-	1,17,44,60,169/-
2	Lodha Builders Private Limited	71,53,676/-	-
	TOTAL	80,78,601/-	1,17,44,60,169/-

10.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that out of the total credits, an amount of Rs. 10,43,47,019/- represented the amount payable to Lodha Developers Pvt Ltd (LDPL) which was transferred by Lodha Construction, Dombivli(LCD) to the assessee company since it became partner in LCD w.e.f 1.4.2007, in place of M/s. LDPL which exited the partnership on 31.3.2007. Further, an amount of Rs.105,84,00,000/-, was credited since shares of Macrotech Constructions Pvt Ltd were purchased from M/s.LDPL by the assessee company. The balance credit entries are various small amounts reflecting reimbursement of expenses, on account payment etc. From the details furnished and submissions made it is noted that the penalty has been levied with respect to journal entries with group concern, which have been undertaken to assign receivables, payment on behalf of group concern for squaring up transactions and for ease in consolidation of accounts, rectification entries etc. As a result of these entries the receivables have gone up or down resulting in taking of loan/ repayment of loan. The assessee company has also paid interest on such loans taken. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain

same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7135/Mum/2016 (A.Y.2008-09) Revenue Appeal

11. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

SI. No.	Name of the sister concerns	Debits (Rs.)
1	Lodha Developers Pvt Ltd	9,24, 925/-
2	Lodha Builders Pvt Ltd	71,53,676/-
	Total	80,78,601/-

11.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that from the details filed it is observed that the amount of Rs.9,24,925/- relates to debits in respect of share of partnership firm, Lodha Construction, Dombivli and the amount of Rs.71,53,676/- represents assignment of loan from M/s. Lodha Builders Pvt Ltd to M/s. Lodha Developers Pvt Ltd on 31.3.2008 by way of journal entries. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT

remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7142/Mum/2016 (Revenue Appeal)-A.Y.2007-08

12. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Cowtown Land Development Pvt. Ltd.	2,50,00,000
2	Lodha Developers Pvt. Ltd.	28,96,55,853
	Total	31,46,55,853

12.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that out of the total credits of Rs.314,655,853/-, the amount of Rs.250,00,000/- represented the amount paid by Cowtown Land Development Pvt. Ltd. to-Mansukhlal Hiralal and Co. for purchase of b land at Walkeshwar on behalf of the assessee company on various dates. Similarly, the credits amounting to Rs.250,00,000/- in the account of Lodha Developers Pvt. Ltd. are on account of payment made by the said company to Mansukhlal Hiralal &

Co, for purchase of land at Walkeshwar on behalf of the assessee company. Further, the credit of Rs. 214,591,443/-, represents the balance of Lodha Builders Pvt. Ltd. with the assessee company, which has been transferred to Lodha Developers Pvt. Ltd. on 31/12/2006, for ease in consolidation of accounts and operational efficiency. Other credit entries are stated to be various small amounts reflecting reimbursement of expenses, on account payment etc. From the details furnished and submissions made it is noted that the penalty has been levied with respect to journal entries with group concerns, which have been undertaken to assign receivables, payment on behalf of group concern for squaring up transactions and for ease in consolidation of accounts, rectification entries etc. As a result of these entries the receivables have gone up or down resulting in taking of loan/ repayment of loan. The assessee company has also paid interest on such loans taken. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7144/Mum/2016 (A.Y.2007-08) Revenue Appeal

13. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the

Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl.No,	Name of the sister concerns	Amount (Rs.)
1	Lodha Developers Pvt Ltd	23,95,91,793
	Total	23,95,91,793

13.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that from the details filed, it is observed that the amount of Rs.23,95,91,793/- represents the balances of Lodha Developers Pvt. Ltd., which has been transferred by debiting its account, to Lodha Builders Pvt. Ltd., It has been submitted that the transfer of balances has been made for ease in consolidation of accounts and operational efficiency. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7145/Mum/2016 (A.Y.2008-09) Revenue Appeal

14. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty

u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the sister concerns	Amount(Rs.)
1	Lodha Developers Pvt.Ltd	24,29,80,400
	Total	24,29,80,400

14.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that the journal entries with group concerns have been undertaken to assign receivables, payments on behalf of group concerns for squaring up transactions and for ease in consolidation of accounts, rectification entries etc., All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7143/Mum/2016 (A.Y.2008-09) Revenue Appeal

15. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the sister concerns	Amount(Rs.)
1	Lodha Developers Pvt.Ltd	2,43,86,906/-
	Total	2,43,86,906

15.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by observing that from the details filed, it is observed that the amount credited to the account of Lodha Developers Pvt. Ltd. represents assignment of debts on various dates. Further, out of the total debits of Q Rs. 2,43,86,906/-, an amount of Rs.2,43,56,839/- represents the transfer of balance to Lodha Builders Pvt, Ltd. on 31.03.2008, which is stated to be for consolidation of account at the year end. The balance amount represents various payments on behalf of group concern etc. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7149/Mum/2016 (Revenue Appeal)-A.Y.2011-12

16. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty

u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Cowtown Land Development Pvt. Ltd.	346786
2	Lodha Developers Pvt. Ltd.	208757
3	Lodha Novel Build Farms Pvt. Ltd.	150000000
	Total	150555543

16.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7148/Mum/2016 (A.Y.2011-12) Revenue Appeal

17. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Cowtown Land Development Pvt. Ltd.	2550
2	Lodha Developers Pvt. Ltd.	208757
3	Lodha Novel Build Farms Pvt. Ltd.	150000000
	Total	150211307

17.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7146/Mum/2016 (Revenue Appeal)-A.Y.2010-11

18. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Lodha Developers Pvt, Ltd.	139948104
2	Lodha Builders Pvt. Ltd.	35951966

	Total	175900070
--	--------------	------------------

18.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7147/Mum/2016 (A.Y.2010-11) Revenue Appeal

19. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Lodha Developers Pvt, Ltd.	139948104
2	Lodha Builders Pvt. Ltd.	35951966
	Total	175900070

19.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as

was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7137/Mum/2016 (Revenue Appeal)-A.Y.2010-11

20. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amounts (Rs.)
1	LODHA HIRISE BUILDERS PVT LTD	35951966
2	LODHA NOVEL BUILD FARMS PVT LTD	8315053753
3	ARIHANTPRIMISES	1377
4	MACROTECH CONSTRUCTION PVT LTD	490370738
5	DURGESHWARI HI RISE & FARMS PVT LTD	4432272839
6	LODHA BUILDCON PVT.LTD	169762961
7	LODHA DEVELOPERS LTD	267907388
8	LODHA ESTATE PVT LTD	64244227
9	LODHA LAND DEVELOPERS PVT LTD	82646374
10	LODHA LEADING BUILDERS PVT LTD	8154

11	LOOHA M1LD-A-BUILT PVT LTD	2306
12	LODHA PROFICIENT BUILD PVT. LTD.	9818
13	MAHAVIR PREMISES PVT.LTD.	11313766
14	PADMAVATI BUILDTECH AND FARMS PVT. LTD.	627220
15	SAMBHAVNATH INFRABUILD AND FARMS PVT. LTD.	391395
16	SUVIDHINATH BUILDTECH AND FARMS PVT. LTD.	465
17	VAMADEV1DEVELOPERS AND FARMS PVT. LTD.	5480308
18	VIMALNATH NOVELTY BUILDTECH AND FARMS PVT. LTD.	391139
19	HI-CLASS DEVELOPERS PVT. LTD.	22782
20	SURYAKRIPA FARMS ANDCONSTRUCTION PVT. LTD.	4000000
21	COWTOWN LAND DEVLOPMENT PVT. LTD.	829000
22	MAA PADMAVATI TOWNSHIP PVT. LTD.	4321773052
	TOTAL	18203061028

20.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7136/Mum/2016 (A.Y.2010-11) Revenue Appeal

21. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	ASHTAVINAYAK BUILDMART PVT LTD	36000
2	ASHTAVINAYAK BUILDWELL & FARMS PVT LTD	60799
3	LODHA HIRISE BUILDERS PVT LTD	35951966
4	LODHA NOVEL BUILD FARMS PVT LTD	8054634275
5	ARIHANT PRIMISES	590433
6	ARIHANTPRIMtSES	1390611
7	BALAII HITECH REALTY & ENGINEERS PVT LTD	23641443
8	CHANDRAPRABHA CONST. & AGRO P LTD	41360
9	CHANDRAPRABHA REALTY & FARMS P LTD	66000
10	CHINTAMANI PARSWANATH CORPORATION	61000
11	MACROTECH CONSTRUCTION PVT LTD	568151236
12	DURGESHWARI HI RISE & FARMS PVT LTD	8271120798
13	EKNATH LAND DEVELOPERS & FARMS P LTD	34975
14	GAJANAND BUILDTECH & AGRO P LTD	36822
15	GANESHJI REALTY & AGRO PVT LTD	37545
16	INFRATECH REALTY & FARMS PVT LTD	72000
17	JAY DURGA MA BUILOTECH PVT LTD	157149
18	JINESHWAR REALTORS PVT LTD	55000
19	KESARIYA BUILDERS & AGRO P LTD	72000
20	LODHA ACCURATE BUILDERS & DEVE. P.LTD	56000

21	LODHA AGROBU1LD TECH PVT LTD	72000
22	LODHA ATTENTION BUILDERS & REALITY P LTD	56000
23	LODHA AUTHENTICITY BUILDERS & CONSULTANTS P LTD	61000
24	LODHA BUILDCON PVT LTD	13110353
25	LODHA BONAFIDE BUILDERS PVT LTD	59000
26	LODHA BUILD CREATION PVT LTD	61000
27	LODHA BUILDTech INFRASTRUCTURE P LTD	54000
28	LODHA BUILDWELL PVT LTD	61000
29	J.ODHA CIVIL CONSTRUCTION PVT LTD	45000
30	LODHA CONSTRUCTION PVT LTD	35198
31	LODHA CORE CONST. & ENGG. PVT LTD	61000
32	LODHA DESIGNER CONST. PVT LTD	271
33	LODHA DEVELOPERS LTD	715480922
34	LOOHA ENERGETIC DEVELOPERS P LTD	79000
35	LODHA ESTATE PVT LTD	53822176
36	LODHA FLATS & HOUSES PVT LTD	140000
37	LODHA FOREMOST CONSTRUCTION P LTD	59000
38	LODHA FOUNDATION DEV. & BUILDERS P LTD	58000
39	LODHA HOUSE DEVELOPERS PVT LTD	60000
40	LODHA IDEAL BUILDERS PVT LTD	59000
41	LODHA INFRABUILD & FARMS PVT LTD	72000
42	LODHA INFRACON PVT LTD	50000
43	LODHA INFRACREATIONS & FARMS P LTD	72000
44	LODHA INFRADEVELOPERS P LTD	60000
45	LODHA INFRAVISION BUILDTech P LTD	65000
46	LODHA INTENSITY CONST. PVT LTD	60000
47	LODHA LAND DEVELOPERS PVT LTD	82868466
48	LODHA LUXURY BUILDCON PVT LTD	55000
49	LODHA NOVELTY BUILDTech & AGRO P LTD	80000
50	LOOHA OBSTINATE EST, DEVELOPERS	61000
SI	LODHA ORIGIN REALTORS & ESTATE PVT. LTD.	61000

52	LODHA PASSION BUILDTECH ENGINEERING PVT. LTD.	146000
53	LODHA PREMIUM BUILDERS PVT. LTD.	40000
54	LODHA PROPERTY AND REALTY LTD	41000
55	LODHA QUALITY REALTORS PVT. LTD.	140000
56	LODHA REALTY BUILD AND CONST. PVT. LTD.	47000
57	LODHA RUILING REALTORS PVT. LTD.	8108
58	LODHA STABILITY REALTORS PVT. LTD.	65000
59	LODHA STRENGTH BUILDCON PVT. LTD.	61000
60	LODHA STRUCTURE DEVELOPERS PVT, LTD.	66000
61	LODHA TECHNO DEVELOPERS PVT. LTD.	65000
62	LODHA TOWNSHIP DEVELOPERS PVT. LTD.	74232
63	LODHA TRANSPERANT HI-TECH DEV. PVT. LTD.	58000
64	LODHA VILLAS PVT. LTD.	135000
65	MAHAVIR COUNTRY HOUSE PVT. LTD.	127000
66	MAHAVIR PREMISES PVT.LTD.	21615060
67	NAVNATH BUILDERS AND DCVLOPERS PVT. LTD.	66000
68	PADAM PRABHU BUILDMART PVT.LTD.	26757
69	PADMAVATI BUILDTECH AND FARMS PVT. LTD.	220
70	PLEASANT REALTY AND FARMS PVT. LTD.	72000
71	SAMBHAVNATH REALITY AND FARMS PVT.LTD.	19000
72	SHALIBHADRA BUILTECH PVT.LTD.	56989
73	SHAUBHADRA REALTORS AND FARMS PVT. LTD.	62000
74	SHANT1NATH RESIDENTIAL PARADISE PVT. LTD.	56567
75	SHEETALNATH BUILDTECH AND FARMS PVT. LTD.	80000
76	SHEETALNATH CONSTRUCTION AND AGRO PVT. LTD.	74000
77	SIDDHESHWAR REAL ESTATE DEVELOPERS AND AGRO FARMS PVT. LTD.	63984
78	SIDDHESHWAR BUILDCON PVT. LTD.	61000
79	SUVIDHINATH BUILDTECH AND FARMS PVT. LTD.	70465
SO	VAMADEVIDEVELOPERS AND FARMS PVT. LTD.	78573042
81	V1VEK ENTERPRISES	1526572
82	LODHA BUILDING AND CONSTRUCTION PVT. LTD.	208

83	GANDHAR BUILDERS PVT. LTD.	689
84	SHANTINATH DESIGNER CONSTRUCTION PVT. LTD.	2358
85	SURYAKRIPA FARMS ANDCONSTRUCTION PVT. LTD.	510000
86	COWTOWN LAND DEVLOPMENT PVT. LTD.	354162
87	MAA PADMAVATI TOWNSHIP PVT. LTD.	4321773052
88	VAMADEVIDEVELOPERS AND FARMS PVT. LTD.	59000
	TOTAL	22249402263

21.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7138/Mum/2016 (Revenue Appeal)-A.Y.2010-11

22. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)

1	Lodha Developers Pvt. Ltd.	3498236
2	Macroteck Constructions Pvt. Ltd.	12668771
3	Susima Buirtech Pvt. Ltd.	115535042
4	Maa Padmavati Township Pvt. Ltd.	112171357
	Total	227706399

22.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7139/Mum/2016 (A.Y.2010-11) Revenue Appeal

23. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Lodha Devejopers Pvt. Ltd.	4323926

2	Macroteck Constructions Pvt. Ltd.	1586588
3	Lodha Land Developers Pvt. Ltd.	2625000
4	Susima Builtech Pvt, Ltd.	224336056
5	Maa Padmavati Township Pvt. Ltd.	112171357
	Total	345042927

23.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No.7141/Mum/2016 (Revenue Appeal)-A.Y.2010-11

24. The issue involved in this appeal is with regard to levy of penalty u/s.271D of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271D of the Act in respect of the following transactions passed through journal entries.

Sl. No.	Name of the Sister Concerns	Amount (Rs.)
1	Lodha Developers Pvt. Ltd.	776600

2	Lodha Hi-Rise Builders Pvt. Ltd	1925786916
3	Macrotek Constructions Pvt. Ltd.	826928435
4	Ajinath Hi-Tech Pvt. Ltd.	171347289
	Total	2924839240

24.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

ITA No. 7140/Mum/2016 (A.Y.2010-11) Revenue Appeal

25. This appeal is filed by the Revenue challenging the action of the Id. CIT(A) deleting the levy of penalty u/s.271E of the Act. In this case, the Id. Addl. CIT levied penalty u/s.271E of the Act in respect of the following transactions passed through journal entries.

25.1. The Id. CIT(A) appreciated the basis of passing journal entries in respect of the aforesaid transactions by making the same observations as

was made in the earlier appeals referred to supra. All other legal arguments advanced by the assessee before the Id. CIT(A); conclusions drawn by the Id. CIT(A) and Addl. CIT remain same with those recorded in Sanathnagar Enterprises Ltd., supra. The arguments of the Id. Special Counsel for the Revenue and the arguments of the Id. AR remain the same as was submitted by them in the case of Sanathnagar Enterprises Ltd., supra. Hence, the conclusions drawn by this Tribunal in the case of Sanathnagar Enterprises Ltd., would hold good for this appeal also. Accordingly, the grounds raised by the Revenue are dismissed.

CO No.11/Mum/2019 & CO No.12/Mum/2019(A.Y.2010-11),
CO No.5/Mum/2019 & CO No.6/Mum/2019(A.Y.2010-11),
CO No.7/Mum/2019 & CO No.8/Mum/2019 (A.Y.2010-11),
CO No.13/Mum/2019 & CO No.14/Mum/2019 (A.Y.2010-11)

26. **As regards to the Jurisdictional issue**, learned Counsel for the assessee Shri Vijay Mehta first of all stated that the assessee has raised jurisdictional issue in it's COs that the penalty levied under section 271D & 271E of the Act in these cases is barred by limitation, which is common in all the COs. On this, learned Special Counsel for the Department Shri P C Chhotaray stated that the issue in CO's is as regards to the limitation of levy of penalty under section 271D and 271E of the Act. In view of the above admitted issue, since the issue is common in all the COs, with the consent of both the parties, we take up assessee's CO No.5/Mum/2019 arising out of ITA No.7136/Mum/2016 and adjudicate the same. The assessee has raised identical grounds in all the COs and hence the ground as raised in assessee's CO No.5 reads as under:

“The Ld.CIT(A) ought to have held that the order u/s. 271E of the Act was illegal and bad in law as it was passed beyond the period of

limitation provided in clause (c) of S. 275(1) of the Income-tax Act, 1961”

27. Brief facts relating to the above issue are that the assessment was framed by the AO u/s 143(3) of the Act vide order dated 21.03.2013 for the assessment year 2010-11. The AO during the course of assessment proceedings noted the fact that the assessee has violated the provisions of section 269SS and 269T of the Act and therefore made a reference to Addl. CIT, CR-6 Mumbai for levying penalty under section 271D and 271E of the Act. The AO recorded this fact vide para 8b of his order, which reads as under:

“8.b By not accepting the loans through account payee cheque or bank draft and also the repayment the same other than through banking mode, the assessee in fact has violated the provision of section 269SS/269T which prohibits such transactions. The proviso to section 269SS exempt certain categories mentioned as (a) to (e) where loan or deposit taken can be accepted other than by account payee cheque or draft but the assessee does not fall under any of the exempt category. Hence, by not accepting the loan / deposit or the repayment of the same by account payee cheque or bank draft the assessee has violated the provisions of Section 269SS/269T of the I T Act. Therefore regarding initiation of penalty proceedings u/s 271D/271E of the I T Act, the matter is being referred to Addl. CIT, CR-6, Mumbai for necessary action.”

27.1. The Addl. CIT noted that a reference for consideration of levy of penalty under section 271E of the Act was received from the AO through letter dated 26.06.2013 intimating that the assessee has repaid loans to various sister concerns through journal entry other than account payee cheques or draft and therefore has violated the provisions of section 269T of the Act. The Addl. CIT CR-6, Mumbai issued notice vide dated 27.03.2014, in which an explanation was called for as to why penalty under section 271E of the Act should not be imposed for violation of the provisions of section 269T of the Act. The Addl. CIT finally levied the penalty under section 271E of the Act vide order dated 10.09.2014 for the assessment year 2010-11.

27.2. The CIT(A) also confirmed the action of the Addl. CIT by holding the same as not barred by limitation by observing in para 5.2.4 as under:

“5.2.4 Subsequent, to above decision of the Mumbai ITAT, the Hon’ble Kerala High Court in the case of Grihalaxmi Vision vs Addl. CIT [ITA 83/2014] has held that the time period of section 275(1)(c) starts from the day when the Addl. CIT issues the notices. Identical view was taken by the Hon’ble Special Bench Chandigarh in the case of Dewan Chand Amritlal vs DCIT [98 ITD 200]. Subsequent to above order of the ITAT, the CBDT has also clarified the position vide circular dated 26.04.2016 bearing number 09/DV/2016 wherein the CBDT has stated that the period of limitation u/s 275(1)(c) shall start from the date when the JCIT issues the notice. Therefore, following the recent judgment of Kerala High Court read with the CBDT’s circular on the identical subject, I am of the considered view that the limitation period mentioned in section 275(1)(c) of the Acts starts from the period when JCIT / Addl. CIT issued the notices for levy of penalty. In the present case, the notice was issued by the Addl. CIT on 27.03.2014 and the order is passed on 10.09.2014 i.e. within six months from the end of the month in which Addl. CIT issued the notice. Since, the order of passed within the period of six months from the end of the month when Addl. CIT issued the notice for levy for penalty u/s 271D of the Act; therefore, the penalty order passed by the Addl. CIT is within the statutory time.”

28. Aggrieved, assessee preferred cross objections against the order of the CIT(A).

29. Before us the Ld. Counsel for assessee Shri Vijay Mehta referred to the provisions of section 275(1)(c) of the Act and stated that the action of the Addl. CIT levying penalty under section 271E of the Act is barred by limitation and for that he referred to the following dates:

(a) Date of order passed being the date of action for imposition of penalty is initiated by the AO	21.03.2013
(b) End of the financial year in which penalty proceedings initiated	31.03.2013
(c) Six months from the end of the month in which action for imposition of penalty is initiated	30.09.2013
(d) Last date stated in column (b) or (c)	30.09.2013

29.1. Accordingly, Ld. Counsel argued that coming to the period of time barring stated in clause (c), no order imposing penalty shall be passed (i) After the expiry of financial year in which action for imposition of penalty is initiated or (ii) six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. According to Ld. Counsel, the action for imposition for penalty has been initiated on 21.03.2013 and accordingly the first time barring is 31.03.2013 and the second time barring is 30.09.2013. He submitted that as the second period i.e. 30.09.2013 expires later, the maximum period for passing penalty order cannot be extended beyond 30.09.2013. Ld. Counsel stated that the subject of initiating of penalty proceedings begins with the first observation made by the AO in the assessment order and he referred to para 8b as reproduced above. The AO after considering the submissions of the assessee formed an opinion in the matter against the assessee made a reference to the Addl. CIT who is the authority empowered to impose the penalty under the Act. According to assessee's counsel, the date of initiation of "*Action for imposition of penalty*" shall be the date of assessment order i.e. 21.03.2013 and accordingly the time barring shall be counted from the date of assessment order. As the six months from the end of the month in which action for imposition of penalty initiated expires on 30.09.2013, no penalty order can be passed beyond that date.

30. On the other hand, the Ld. Special Counsel for the Revenue Shri P.C. Chhotaray argued on behalf of the Revenue and stated that the AO has made only a reference for consideration of penalty under section 271E of the Act vide letter dated 26.06.2013 and the Addl. CIT after receiving and perusing the reference made by the Asst. Commissioner, Central Circle-42, Mumbai, a show cause notice was issued to the assessee vide notice

dated 27.03.2014, calling for explanation as to why penalty under section 271E of the Act should not be imposed on the assessee. According to Ld. Special Counsel for the Revenue, this is the starting point of initiating the penalty proceedings. He relied on the CBDT Circular No.09/DV/2016 dt.26.04.2016 clarifying the CBDT's view that the commencement of limitation for imposition of penalty under section 271D and 271E of the Act is the date when the Addl. CIT issues the show cause notice for the penalty and for this the CBDT finds support from the judgment of Hon'ble Kerala High Court in the case of Grihalaxmi Vision vs. Addl. CIT, Range-1, Kozhikode in ITA No.83 & 86 of 2014 dated 07.08.2015. Ld. Special Counsel for the Revenue referred to para 11, 12 & 13 of the judgment.

30.1. Ld. Standing Counsel stated that the case laws cited by the assessee are distinguishable on facts and he particularly referred to the observations made by Special Bench of this Tribunal in the case of Dewan Chand Amritlal vs. DCIT (2006) 98 ITD 200 (Chandigarh Spl. Bench) by referring to paras 26, 27 & 28 thereon.

31. We have heard rival contentions and gone through the facts of the case. We noted that the Tribunal in assessee's own case and group cases after considering various decisions on the issue held that the discussion by the AO in the assessment order and making reference to the Addl. CIT for imposition of penalty under section 271D or 271E of the Act, constitutes initiation for action for imposition of 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. The Tribunal in assessee's group cases in the case of DCIT vs. Lodha Builders Pvt. Ltd. ITA No.6614/M/2016 for A.Y. 2007-08 & ors. vide order dated 31.01.2020 has considered this issue and relied on another Co-ordinate Bench decision in ITA No.475 to 481/M/2014 order dated 27.06.2014 held that the penalties

levied under section 271D & 271E of the Act are barred by limitation as the reference made by the AO to the Addl. CIT for initiation of penalty proceedings in the assessment order constitutes action for imposition of penalty as contemplated in the provisions of section 275(1)(c) of the Act. The relevant findings and observations of the Bench reads as under:

“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, filing 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 IT AT. 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

32. 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 thereon, and the Assessing Officer holding that the assessee has violated the provisions of section 269SS/269T 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 made to Addl. CIT in these cases, are barred by limitation and accordingly the said penalty orders are quashed."

32.1. Before us, Ld. Counsel for the assessee relied on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Hissaria Brothers

(2007) 291 ITR 244, wherein Hon'ble Rajasthan High Court has considered the issue of levy of penalty under section 271D and 271E of the Act and finally held as under:

“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.

28. Thus, both on the ground that the transaction in question of retention of sale price by the Kachcha Arhatiya did not amount to deposit and its utilisation and dealing with it at the instance of farmer constituents did not amount to repayment of loan or deposits within the meaning of section 269SS or section 269T, and on the ground that limitation under section 275(1)(c) applies to such proceedings, we hold in favour of the respondent.”

Subsequently, this decision of Hon'ble Rajasthan High Court was affirmed by Hon'ble Supreme Court in Civil Appeal No.5254 of 2008 (2016) 386 ITR 719 (SC) wherein it is held as under:

“1. On perusing the judgment of the High Court, it is found that penalty imposed on the respondent herein was also set aside on the ground that the provisions of Section 271-D and 271-E of the Income Tax Act were invoked after six months of limitation and, therefore, such penalty could not have been imposed. Since the outcome of the judgment of the High Court can be sustained on this aspect alone, it is not even necessary to go into other aspects. Leaving the other questions of law open, the appeal is dismissed. There shall be no order as to costs.”

32.2. The assessee also relied on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Jitendra Singh Rathore (2013) 352 ITR 327

(Raj). In this case also similar proposition was laid down in favour of assessee.

33. We have considered the propositions argued by both the sides and noted that the issue is squarely covered by the decision of Hon'ble Rajasthan High Court in the case of Hissaria Brothers (supra), which was ultimately affirmed by Hon'ble Supreme Court dismissing the civil appeal of the Revenue. Even otherwise, this issue is fully covered by Co-ordinate Bench of this Tribunal in assessee's group cases (cited and reproduced supra) and accordingly taking a consistent view, we hold that a reference made by the AO to the Addl. CIT for initiation of penalty proceedings in the assessment order, by a preliminary act, constitutes action for imposition of penalty as contemplated in the provisions of section 275(1)(c) of the Act. Hence, the penalty orders passed by the Addl. CIT in all these cross objections are barred by limitation and accordingly, quashed. The facts and circumstances are exactly identical in all the 8 cross objections, accordingly all are allowed.

34. In the result, all the appeals of the Revenue are dismissed and all Cross Objections of the assessee are allowed.

35. TO SUM-UP

Sr. No.	ITA No.	A.Y.	Appeal By	Result
1-2	ITA No.3147/Mum/2017 & 3148/Mum/2017	2007-08	Revenue	Dismissed
3-4	ITA No.7134/Mum/2016 & 7135/Mum/2016	2008-09	Revenue	Dismissed
5-6	ITA No.7142/Mum/2016 & 7144/Mum/2016	2007-08	Revenue	Dismissed
7-8	ITA No.7145/Mum/2016 & 7143/Mum/2016	2008-09	Revenue	Dismissed
9-10	ITA No.7149/Mum/2016	2011-12	Revenue	Dismissed

	& 7148/Mum/2016			
11-12	ITA No.7146/Mum/2016 & 7147/Mum/2016	2010-11	Revenue	Dismissed
13-14	CO No.11/Mum/2019 & CO No.12/Mum/2019	2010-11	Assessee	Allowed
15-16	ITA No.7136/Mum/2019 & 7137/Mum/2016	2010-11	Revenue	Dismissed
17-18	CO No.5/Mum/2019 & CO No.6/Mum/2019	2010-11	Assessee	Allowed
19-20	ITA No.7138/Mum/2016 & 7139/Mum/2016	2010-11	Revenue	Dismissed
21-22	CO No.7/Mum/2019 & CO No.8/Mum/2019	2010-11	Assessee	Allowed
23-24	ITA No.7141/Mum/2016 & 7140/Mum/2016	2010-11	Revenue	Dismissed
25-26	CO No.13/Mum/2019 & CO No.14/Mum/2019	2010-11	Assessee	Allowed
27-28	ITA No.3143/Mum/2017 & 3144/Mum/2017	2012-13	Revenue	Dismissed

Order pronounced on 17/12 /2021 by way of proper mentioning
in the notice board.

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 17/12/2021
KARUNA, sr.ps

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, Mumbai