

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1056/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2017-2018

NK Builders, GF 11 Shri Rangam Resicom, New Karelibaug, Vadodara-390019.  <b>PAN: AALFN5553C</b>	Vs.	A.C.I.T, Circle-3(1), Vadodara. <b>Now D.C.I.T,</b> Circle 2(1)(1), Vadodara.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Jigar Adhiyaru, AR
Revenue by	:	Shri VK Mangla, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **12/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **10/04/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, arising in the matter of order passed under s. 271D of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-18.

2. The only issue raised by the assessee is that the Ld. CIT(A) erred in confirming the penalty levied u/s 271D of the Act amounting to Rs. 23,00,000/- only.
3. In the present case, it was found during the survey operation that the assessee has received a sum of Rs. 23,00,000/- representing the unaccounted business income against the sale of booking of properties. As per the AO, such receipt in cash is in violation of provision of section 269SS of the Act. Thus, the AO initiated the penalty proceedings u/s 274 r.w.s. 271D of the Act, by issuing notice dated 30/12/2021 for the violation of the provisions of section 269SS of the Act, which came to be confirmed vide order dated 15/02/2022 under section 271D of the Act. On appeal, the Ld. CIT(A), confirmed the order of the AO.
4. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.
5. The Id. AR before us inter-alia raised various contention that the proceedings u/s 271D of the Act, were not initiated in the assessment order and therefore the same cannot be levied. The Ld. AR also filed the written submission running from pages 1 to 7, raising various contentions.
6. On the other hand, the Ld. DR vehemently supported the order of the authorities below.
7. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the assessment order u/s 143(3) of the Act, dated 30/12/2019, we note that the proceedings u/s 271D of the Act, were not initiated. It is also an admitted position that the provisions of section 271D do not require to initiate proceedings during the assessment proceedings u/s 143(3) of the Act. However, there is a time limit specified u/s 275 of the Act for

levying the penalty u/s 271D of the Act. The relevant extract of the provision is reproduced as under:

**275. No order imposing a penalty under this Chapter shall be passed—**

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*(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.*

7.1 As per the above provision, it is transpired that the penalty cannot be levied after the expiry of the Financial Year in which the proceedings for levying the penalty were initiated. Thus, the provision of section 275 requires for the initiation of penalty in the assessment proceedings. In holding so, we also draw support and guidance from the order of this Tribunal in the case of H Ajit bhai & Co. vs ACIT reported in 45 ITD 262 wherein it was held as under:

*It is true that section 271B or any other provisions of the IT Act nowhere expressly prescribes a period of limitation for the initiation of penalty proceedings under section 271B. But it is clear from a plain reading of the language of section 275 as well as it is implied in the scheme of the provisions that such penalty proceedings under section 271B should necessarily be initiated while the Assessing Officer is in session of assessment proceedings and not afterwards. The use of expression "in the course of which action for imposition of penalty has been initiated are completed" in section 275 implicitly contain a limitation that the penalty proceedings under section 271B should necessarily be commenced before completion of the assessment proceedings. The said provision provides an explicit limitation, namely, that the order imposing penalty has to be passed within the period prescribed in section 275. That period of limitation starts running with reference to the date of completion of the proceedings in the course of which action for imposition of penalty in question has been initiated. Thus by necessary implication, the statute, by use of these words in section 275, has also provided that action for imposition of penalty must be initiated in the course of some prior proceedings. which in the present case can only mean that it should be initiated in the course of assessment proceedings. Such a view is fortified by the decisions in CIT v. Sardar Amarjit Singh [1981] 132 ITR 365 (Delhi), CIT v. Rajinder Kumar Somani [1980] 125 ITR 756 (Delhi) and D.M. Manasvi v. CIT [1969] 72 ITR 17 (Guj.) which has been affirmed by the Hon'ble Supreme Court in the case of D.M. Manasvi v. CIT [1972] 86 ITR 557. In view of the aforesaid discussions, we are of the considered opinion that the Assessing Officer could not have validly initiated the penalty proceedings under section 271B after the completion of the assessment proceedings for the years under consideration. It may not be necessary for the Assessing Officer to issue show cause notice under section 271B prior to completion of the assessment but there has to be some material on records to indicate that such penalty proceedings had been Initiated before completion of the assessments in question. Nothing has been pointed out by the departmental authorities or by the learned D.R before us showing that the penalty proceedings were initiated prior to completion of the relevant assessments. In fact the contention of the assessee that the penalty notices under section*

*271B were issued for the first time after a period of 16 months from the date of completion of the assessments has not been disputed by the departmental authorities or by the learned D.R. before us. In view of these facts and the legal position, we are of the considered opinion that penalties levied on the assessee cannot be sustained for both the years under consideration.*

7.2 Thus, in view of the above, we are of the opinion that for levying the penalty u/s 271D of the Act, it is compulsory upon the AO to initiate the penalty proceedings during the assessment proceedings. But in the instant case, the AO has not done so and therefore we are of the view that the penalty levied by the AO u/s 271D of the Act and confirmed by the Ld. CIT(A) is not sustainable. Accordingly, we set-aside the findings of the Ld. CIT(A) and direct the AO to delete the penalty levied by him u/s 271D of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal filed by the assessee is hereby allowed.

**Order pronounced in the Court on 10/04/2024 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
10/04/2024