

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 9051/DEL/2019 (A.Y 2008-09)
I.T.A. No. 9260/DEL/2019 (A.Y 2010-11)
I.T.A. No. 9261/DEL/2019 (A.Y 2010-11)
I.T.A. No. 9052/DEL/2019 (A.Y 2011-12)
I.T.A. No. 9054/DEL/2019 (A.Y 2012-13)
I.T.A. No. 9053/DEL/2019 (A.Y 2012-13)**

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| DCIT Central Circle-7 Room No. 330, ARA Centre, Jhjewalan Extension, New Delhi (APPELLANT) | Vs. | Mohd. Shahnawaz 5618, 2 nd floor, Basti Harphool Singh, above MCD School, Sadar Bazar, New Delhi PAN No. BAPPS4125Q (RESPONDENT) |
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| Assessee by : | Ms. Monika Agarwal, Adv & Sh. Jayant Bothra, Adv |
| Department by: | Sh. Subhra Jyoti Chakraborty, CIT DR |

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| Date of Hearing | 03.09.2024 |
| Date of Pronouncement | 11.09.2024 |

ORDER

PER BENCH:

The captioned six appeals filed by the Revenue for the Assessment Year 2008-09 to 2012-13 aggrieved by the orders of

the CIT(A) dated 12/09/2019, wherein the Ld. CIT(A) deleted the penalty imposed u/s 271 D read with Section 269SS and orders of penalty passed u/s 271E read with Section 269T of the Income Tax Act 1961 ('Act' for short).

2. The Department of Revenue has urged identical grounds of Appeal, which reads as under:-

“1. That the order of the Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the penalty levied on protective basis u/s 271D of the I. T. Act, 1961.”

3. Brief facts of the case are that, during the course of the assessment proceedings for Assessment Years 2008-09, 2010-11, 2011-12 and 2012-13, the A.O. noticed that the assessee has received certain loans/deposits, each more than Rs. 20,000/- from various parties in cash, which was in violation of provisions of Section 269SS of the Act, the A.O. has also noticed that the assessee has made repayment of certain loan/deposit each amount more than 20,000/- from various parties in cash in Assessment Years 2010-11 and 2012-13 and found the same is in violation of provision of Section 269 T of the Act. The Ld. A.O. made

recommendation/intimation in all the above penalty proceedings to the competent authority i.e. Joint Commissioner of Income Tax, for taking action u/s 271E or Section 271D of the Act vide letter dated 08/12/2017 along with assessment records. The order of penalty came to be passed by the Commissioner of Income Tax on 24/09/2018 by imposing the penalty on the assessee u/s 271E and 271D of the Act respectively. Aggrieved by the orders of penalty, the assessee preferred Appeals before the CIT(A), the Ld. CIT(A). The Ld. CIT(A) vide order dated 12/09/2019 allowed the Appeal filed by the assessee. As against the orders of the CIT(A), the Revenue preferred the above caption Appeals on the grounds mentioned.

4. The assessee filed an Application under Rule 27 of the ITAT Rules, contending that the assessee had raised a Ground before the Ld. CIT(A) that the initiation and imposing the penalty is barred by limitation as per Section 275(1C) of the Act, but the said ground urged by the assessee has not been dealt by the Ld. CIT(A), though the Ld. CIT(A) deleted the imposition of penalty on merits. Therefore, sought for permission of orally argue on the said ground before us. We find merit in the contention of the Assessee's

Representative. Though the assessee has raised the ground of limitation for initiation of penalty before the CIT(A), the same has not been adjudicated by the Ld. CIT(A). The Ld. Assessee's Representative further submitted that the order of penalty passed u/s 271D and 271E of the Act are barred by limitation in view of provisions of Section 275(1)(c) of the Act, by taking us through the records, made oral elaborate submission and also filed the Written submission and sought for dismissal of the Appeal filed by the Revenue.

5. The Ld. Departmental Representative submitted that the Ld. CIT(A) has committed error in deleting the penalty levied u/s 271D and 271E respectively, wherein the Ld. CIT(A) has failed to consider the fact that the assessee has clearly violated the provision of Section 269SS and 269T of the Act respectively, therefore, sought for allowing the appeal. Further relying on the orders of the penalty, sought for rejecting the contentions of the Assessee on the point of Limitation to pass Orders of penalty.

6. We have heard both the parties and perused the material available on record. The assessee filed an application under Rule 27 of ITAT Rules to urge the ground of limitation before us as provided u/s 275 (1) (c) of the Act by supporting the decision of the CIT(A) which has been decided in favour of the Assessee. The Jurisdictional High Court in the case of Sanjay Sawhney Vs. Pr. CIT [2020] 116 Taxmann.com 701/273 Taxman 332 (Delhi), held that Rule 27 of ITAT Rules is one of such Rules which provide additional right to the respondent to defend the order of CIT(A) decided in his favour by raising the issues in respect of those grounds which were decided against him by the CIT(A) even though no appeal/cross objection has been filed. Thus, we allow the Application filed by the Assessee under rule 27 of ITAT Rules by permitting the Assessee to defend the order of the CIT(A) raising the issue in respect of the Ground of limitation.

7. To examine the legality or otherwise of the orders of the CIT(A) on the point of limitation is concerned, certain dates and events are necessary to be examined and the same is produced for the sake of convenience in following manners:-

| S. No. | A.Y | Section | Date of Penalty Order | Condition-1 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 | | Condition II- six months from the end of the month in which action for imposition of penalty is initiated | | Limitation to levy penalty u/s 271D and 271E |
|--------|-------|---------|-----------------------|--|------------------------------|---|--|--|
| | | | | Date on which Assessment proceedings completed | Limitation under condition 1 | Date of initiation of penalty i.e. date of recommendation | Limitation under Condition II to initiate Penalty (Para and Page No. of penalty order) | |
| 1 | 08-09 | 271D | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |
| 2 | 10-11 | 271D | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |
| 3 | 10-11 | 271E | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |
| 4 | 11-12 | 271D | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |
| 5 | 12-13 | 271D | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |
| 6 | 12-13 | 271E | 24.09.2018 | 18.07.2018 | 31.03.2018 | 08.12.2017 (Para1 Pg1) | 30.06.2018 | 30.06.2018 |

8. All the above penalty proceedings has been initiated pursuant the letter dated 08/12/2017 i.e. recommendation of the Assessing Officer to the Commissioner of Income Tax, Central Range-5, New Delhi for initiation of penalty proceedings u/s 271E and 271D of the Act respectively.

9. The provisions of Section 271(5)(1)(c) provides for limitation to initiate penalty u/s 271D and 271E of the Act, which reads as under:

*“No order imposing a penalty under this Chapter shall be passed—
(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) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed; (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.*

10. Thus, the reading of provision of Section 275(1)(c) of the Act, the limitation period for imposition of penalty either u/s 271D or 271E would be the expiry of Financial Year in which the proceedings, in the course of which action for 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.

11. The CBDT vide Circular No. 10/2016 dated 26/04/2016 has clarified that the limitation for the purpose of levying the penalty u/s 271D and 271E of the Act is to be determined as per Section 275(1)(c) of the Act. The relevant extract from the Circular are reproduced as under:-

“3. In view of the above, it is a settled position that the period of limitation of penalty proceedings under sections 271D and 271E of the Act is governed by the provisions of section 275(1)(c) of the Act. Therefore, the limitation period for the imposition of penalty under these provisions would be 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. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a) of the Act.”

12. The Hon'ble High Court of Delhi in its Judgment dated 05/05/2017 in the case of Principal Commissioner of Income Tax, Central 2, Vs. Mahesh Wood Product Pvt. Ltd. reported in 2017 (5) TMI 433 held that the starting point for initiating of penalty

proceedings would be the date on which the A.O. writes a letter to the ACIT recommending the issuance of show cause notice and the limitation would begin the run from the date of letter of the A.O. recommending 'initiation' of penalty proceedings. The relevant portion of the Judgment of Hon'ble High Court of Delhi reads as under:-

9. *"However, this question came up for consideration in **PCIT v. JKD Capital & Finlease Ltd.(supra)**. The date on which the AO recommended the initiation of penalty proceedings was taken to be the relevant date as far as Section 275(1)(c) was concerned. There was no explanation for the delay of nearly five years in the ACIT acting on the said recommendation. The Court held that the starting point would be the 'initiation' of penalty proceedings. Given the scheme of Section 275(1)(c) it would be the date on which the AO wrote"!' letter to the ACIT recommending the issuance of the SCN. While it is true that the ACIT had the discretion whether or not to issue the SCN, if he did decide to issue a SCN, the limitation would begin to run from the date of letter of the AO recommending 'initiation' of the penalty proceedings.*

13. In the present case, admittedly, the recommendation has been made by the A.O. for initiation of penalty was on 08/12/2017. As per the first condition of Section 275(1)(c) i.e. expiry of the Financial Year in which the proceedings, in the course of which action for imposition of penalty has been initiated and completed on 31/03/2018. As per second condition of Section 275(1)(c) i.e. six months from the end of month in which action for imposition of

penalty has been initiated will be expired on 30/06/2018. Considering the fact that the Ld. Additional CIT(A) has initiated penalty on 07/07/2018 whereas the same has been referred to him on 08/12/2017 itself, thus, in our considered opinion, the same is barred by limitation as per provision of Section 275(1)(c) of the Act. Thus, we have no hesitation to delete the orders of penalty, accordingly, we find no reason to interfere with the conclusion made in the order of the CIT(A) in deleting the penalty, accordingly, the Ground of Appeal of the Revenue.

14. In the result, the Appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 11th September, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 11/09/2024

*R.N, Sr. PS**

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI