

आयकर अपीलीय अधकरण, इंदौर 0ायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 188 to 190/Ind/2024 (AYs: 2012-13 to 2014-15)

Shri Vimal Todi, 501, Darshan Residency, 104-105, Anand Bazar, Indore (PAN: AFYPT0164P)	<u>बनाम/</u> Vs.	Additional Commissioner of Income-tax, Indore
(Assessee/Appellant)		(Revenue/Respondent)

Assessee by	Shri Venus Rawka, CA & AR
Revenue by	Shri Ashish Porwal, Sr. DR

Date of Hearing	10.10.2024
Date of Pronouncement	25.10.2024

आदेश/ ORDER

Per Bench:

The captioned three appeals are filed by assessee assailing two separate appeal-orders, one for Assessment-Year ["AY"] 2012-13 and other for AYs 2013-14 & 2014-15, both dated 29.12.2023 and passed by learned Commissioner of Income-tax (Appeals)-3, Bhopal ["CIT(A)"], which in turn arise out of respective penalty-orders dated 28.03.2019 passed by Addl. CIT (Central), Indore u/s 271D of the Income-tax Act, 1961 ["the Act"].

2. The Registry has informed a delay of 8 days in all three appeals. Ld. AR for assessee submitted that the impugned orders were passed on 29.12.2023 and the last date available for filing of appeals was 01.03.2024.

The assessee paid appeal fee on 02.02.2024 which is evident from challans of payments held on record. However, since the assessee was travelling, the appeal memos could not be signed and filed within 60 days, hence the delay occurred in filing of appeal papers. Ld. AR submitted that the assessee has honestly averred this true fact in the affidavit filed. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He submitted that the sole reason of delay is as explained in the affidavit, the same should be considered judiciously and the delay be condoned. Ld. DR for Revenue fairly agreed to the submissions of Ld. AR and did not have any objection if the delay is condoned. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a sufficient cause for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a sufficient cause for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) and the

decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

3. Since the issue for adjudication in these appeals is identical; they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

4. The background facts leading to these appeals are such that the assessee was a director of M/s Jaideep Ispat and Alloy Pvt. Ltd. [**"Company"**] forming part of "Moirra Group" of Indore. A search u/s 132 was conducted on 17.06.2015 upon Moirra Group including assessee and in pursuance thereof, the assessments of assessee were made u/s 153A r.w.s. 143(3) by Dy. Commissioner of Income-tax (Central)-2, Indore for different years including AYs 2012-13 to 2014-15 with which are concerned in these three appeals. During search-proceedings, various incriminating documents in the form of hard copies as well as soft documents were found and seized from factory premise of Company. During post-search enquiries, data was also retrieved from deleted files of hard disk. On perusal of seized material, the AO found notings of certain amounts taken by assessee by way of loans from parties. In some cases, cheque details were mentioned and in some cases no mode was mentioned. On further examination, the AO found that the loans taken through cheques were duly reflected in books of account of assessee but the loans where mode was not mentioned, were not appearing in books of account. Accordingly, the AO treated those entries where mode

was not mentioned, as entries of loans taken in cash. The AO treated this as a violation of section 269SS. Since the penalty u/s 271D for violation of section 269SS could be imposed by Addl. Commissioner, the AO referred matter to Addl. CIT (Central), Indore [**“Competent Officer”**] vide letter No. F.No. DCIT(Cen.)-2/Ind/Penalty/269SS/ 269T/2018-19 dated 13.06.2018 for imposition of penalty u/s 271D. Acting upon such reference, the Competent Officer issued a show-cause notice dated 29.10.2018 to assessee u/s 274 r.w.s. 271D for imposition of penalty to which the assessee filed his submissions. However, being unconvinced with assessee’s submissions, the Competent Officer ultimately passed penalty-orders dated 28.03.2019 imposing a penalty of Rs. 50,00,000/-, Rs. 3,36,00,000/- and Rs. 30,00,000/- for AY 2012-13, 2013-14 and 2014-15 respectively. Aggrieved, the assessee carried matters in first-appeal. During first-appeal, the assessee challenged the legality of penalty-orders on time limitation ground as well as imposition of penalties on merit. The CIT(A), however, rejected assessee’s entire submission and upheld penalty orders passed by Competent Officer. Now, the assessee has come in next appeals before us.

5. Learned Representatives of both side agree that the grounds and underlying facts are identical in all three years, therefore any one case may be taken and the same adjudication will follow for all three years.

6. The grounds raised in AY 2012-13 are as under:

"1. That, the Ld. CIT(A) erred in law and the facts of this case and upheld the penalty levied by Assessing Officer u/s 271D of the Income-tax Act, 1961 of Rs. 50,00,000/- without considering full facts and legal position. The penalty levied therefore is totally wrong and illegal on the facts of the case.

2. That, the Ld. CIT(A) erred in law and the facts of the case by confirming the penalty u/s 271D despite the fact that impugned penalty order was barred by limitation u/s 275 of Income-tax Act, 1961.

3. That, the Ld. CIT(A) erred in law and the facts of the case and failed to appreciate Explanatory Notes and Circular No. 387 dated 07/06/1984 issued by the CBDT.

4. That the appellant craves to leave, add, alter or amend any of the ground at or before hearing."

7. As can be seen, in Ground No. 2, the assessee claims that the impugned penalty-order was barred by time-limitation prescribed in section 275. The assessee also raised this very issue before CIT(A) but the CIT(A) referred following provision of section 275(1)(c):

"275(1) No order imposing a penalty under this Chapter shall be passed –

(a) XXX

(b) XXX

(c) in any other case, after 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 six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."

Thereafter, the CIT(A) dismissed assessee's claim of legality by passing following order:

"3.1.3 As per the above section, the last date for passing of eht penalty-orders was six months from the end of the month in which action for imposition of penalty is initiated. The Addl. CIT(Central), Indore issued a notice u/s 271D r.w.s. 274 of the Act on 29/10/2018 and passed the penalty-order u/s 271D on 28.03.2019. Hence, the penalty order was passed before the limitation period expired. The appellant's contention that the initiation of penalty proceedings should be taken from the date when the Assessing Officer

*recommended initiation of penalty to the Addl. CIT (Central), Indore vide letter dated 13.06.2018 is not tenable. Penalty proceedings can be said to be properly initiated only when notice of the same is effectively served on the assessee. Hence, the date of initiation of penalty proceedings will be taken as 29.10.2018. The appellant's appeal on this point stands **dismissed.**"*

7. During hearing before us, Ld. AR for assessee made vehement arguments to contend that the impugned penalty-orders are certainly timebarred. To show this, Ld. AR first submitted relevant data as under:

- (i) Date on which assessment-order u/s 153A was passed by AO -
27.12.2017
- (ii) Date on which the AO made reference to Competent Officer for imposition of penalty – 13.06.2018
- (iii) Date on which the Competent Officer issued show-cause notice to assessee u/s 274 – 29.10.2018
- (iv) Date on which the penalty-orders were passed by Competent Officer –
28.03.2019

9. Then, Ld. AR referred the very same provision of section 275(1)(c) as analysed by Ld. CIT(A), re-produced in earlier para. Ld. AR explained that there are two limbs in section 275(1)(c) and the Competent Officer could validly pass penalty-order as per the time-limit of first limb or second limb, whichever is later. In so far as the *first limb* is concerned i.e. the expiry of the financial year in which the proceedings in the course of which action for

imposition of penalty has been initiated, Ld. AR referred Para 20.5 of assessment-order where the AO has made following noting:

"20.5 The sum of cash loans comes to Rs. 50,00,000/- for AY 2011-12, Rs. 3,36,00,000/- for AY 2013-14 and Rs. 30,00,000/- for AY 2014-15, on which provisions of section 269SS/T need to be invoked and shall be referred according to the JCIT (Central), Indore."

Then, Ld. AR submitted that in present case *"the proceeding, in the course of which the action for the imposition of penalty has been initiated, are completed"* shall be the assessment-proceeding done by AO and since that proceeding was completed with the passing of assessment-order dated 27.12.2017, the time-limit of first limb would expire on 31.03.2018. So far as the *second limb* is concerned i.e. six months from the end of month in which action for imposition of penalty is initiated, Ld. AR submitted that the same would expire either on 30.06.2018 (if reckoned from date of assessment-order i.e. 27.12.2017) or at best on 31.12.2018 (if reckoned from date on which on which the AO made reference to the Competent Officer i.e. 13.06.2018). Ld. AR submitted that later date of two limbs shall accordingly be 30.06.2018 (later of 31.03.2018 or 30.06.2018) OR at best 31.12.2018 (later of 31.03.2018 or 31.12.2018), hence the Competent Officer's time-limit to pass penalty-order expired on 30.06.2018/ 31.12.2018. Since the Competent Officer has passed orders on 28.03.2019, they were outside the limitation of section 275(1)(c) and hence time-barred, accordingly liable to be quashed.

10. Ld. AR further submitted that the CIT(A) is very much wrong in adopting 29.10.2018 i.e. the date on which the Competent Officer issued show-cause notice u/s 274 to assessee as the basis date for reckoning the time clock of section 275(1)(c). This is grossly against the interpretation taken by judicial forums. Ld. AR relied upon following decisions:

(a) **PCIT Vs. Thapar Homes Ltd. (2024) 159 taxmann.com 450 (Delhi HC):**

In this case, the AO passed assessment-order for AY 2008-09 on 31.12.2010. Thereafter, the ACIT who was competent authority to impose penalty u/s 271D, 271E, 271AAA, issued notice dated 13.06.2011 to assessee u/s 274. Finally, the ACIT passed penalty-order on 30.12.2011 in terms of section 275(1)(c). The controversy arose whether the penalty-order was time-barred? On appeal, the Hon'ble Delhi High Court held that the limitation would be *computed with reference to the date on which the AO passed assessment-order*. Their Lordship further observed that if the limitation is connected to when the concerned/competent officer issues notice, then the revenue can always extend the period of limitation beyond the timeline prescribed in section 275. The relevant paras of order of Hon'ble High Court are re-produced below:

"12. In the facts that obtain in the instant case, the FY in the course of which the quantum proceedings, in the course of which the penalty proceedings were initiated, concededly culminated on 31.03.2011. On the other hand, the period of six months from the end of the month in which action for imposition of penalty was initiated ended on 30.06.2011.

13. Concededly, the penalty order was passed way beyond the later date i.e., 30.06.2011.

13.1 The record discloses that the penalty order was passed on 30.12.2011.

14. Mr Ruchir Bhatia, Senior Standing Counsel, who appears on behalf of the appellant/revenue, says that the AO was not empowered to pass the penalty order under the provisions referred to hereinabove.

14.1 Mr. Bhatia places reliance on Section 271E(2), which provides that the penalty imposable under sub-section (1) of the said section shall be imposed by the ACIT.

14.2 It is based on the language of sub-section (2) of section 271E that Mr. Bhatia argues that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the ACIT issued the notice, i.e., 13.06.2011.

14.3 Therefore, based on this line of argument, Mr. Bhatia says that the limitation in this case expired only on 31.12.2011, and since the penalty order was passed on 30.12.2011, it was within the prescribed period of limitation, as being the latter of the two dates, as indicated in Section 275(1)(c) of the Act.

15. We may note that the very same issue stands concluded against the appellant/revenue via the decision rendered by this Court in ITA 19/2021, dated 11.09.2023 titled as PCIT vs. Thapar Homes Limited, 2023:DHC:7808:DB. The following observations made in the aforesaid judgment in this behalf, being relevant, are extracted hereafter:

"17. In our view, this argument, if accepted, would lead to absurdity, the reason being that once the appellant/revenue decides to trigger penalty proceedings against the respondent/assessee, it is incumbent upon them to keep an eye on the limitation period prescribed under Section 275(1)(c) of the Act.

18. *If the limitation period is connected to when the concerned officer issues notice, then the appellant/revenue can extend the period of limitation, way beyond the timeline prescribed in Section 275 (1) (c).*

19. *We are clearly of the view that the notice issued by the JCIT on 13.06.2011 could not have extended the period of limitation, as prescribed under Section 275(1)(c) of the Act.*

20. *In this case, what is required to be brought to the forefront is that the AO had taken prior approval of the ACIT, who is equal in rank to the JCIT, before triggering the penalty proceedings. Thus, although the decision to initiate penalty proceedings is found embedded in the assessment-order dated 31.12.2010 and approval to frame the assessment order was given prior to the said date, the notice was issued only on 13.06.2011.*

20.1 Even though this may be an additional factor in this particular case, our reasons for holding the limitation period as prescribed under Section 275(1)(c) of the Act had expired latest by 30.06.2011, is not confined only to this aspect of the matter. The appellant/revenue, as noticed above, cannot extend the period of limitation by deciding at its whim and fancy when the notice has to be issued. The notice under Section 274 should have been issued before the period of limitation, as discussed above.

21. Thus, for the foregoing reasons, the question of law which has been framed is answered against the appellant/ revenue and in favour of the respondent/ assessee.

The appeal is disposed of, in the aforesaid terms."

16. Therefore, in our opinion, the impugned order requires no interference."

(b) Ram Kishan Verma Vs. Addl. CIT (2023) 157 taxmann.com 7

(ITAT, Jaipur):

In this case, on the basis of documents seized from possession of one Shri DP Sehgal during a search proceeding u/s 132(1) on 19.12.2014, the DDIT, Jaipur, found a contravention of section 269SS committed by assessee. The DDIT, vide letter dated 23.10.2015, informed to the AO of assessee about such contravention. Based thereon, the AO made a reference dated 09.08.2017 to Addl. Commissioner who was a Competent Officer to impose penalty u/s 271D. Thereafter, the Addl. CIT issued show-cause notice dated 01.09.2017 u/s 274 to assessee and finally imposed penalty vide penalty order dated 11.10.2017. The controversy arose whether the penalty-order was timed-barred? On appeal, the ITAT, Jaipur held that the limitation would start from end of Oct, 2015 according to *the first communication dated 23.10.2015 made by DDIT, Jaipur to AO*. In coming to such conclusion, the ITAT also explained the rationale of two limbs of section 275(1)(c) and

observed "The plain reading of this clause reveals that in case the proceedings in the course of which action for imposition of penalty has been initiated in the financial year, then the order for penalty shall not be passed after the expiry of the said financial year. However, there may be instances when such proceedings are completed at the fag end of the financial year to say in the month of March itself, then it is practically not possible to pass a penalty order before 31st March of the same financial year. Therefore, the second limb of this clause is relevant which gives 6 months from the end of the month in which action of imposition of penalty is initiated. In the case in hand, the action for imposition of the penalty was initiated vide letter dated 23rd October, 2015 whereby the DDIT Investigation-3, Jaipur sent information along with the document to the AO for his perusal and necessary action. These are the proceedings from which the AO has satisfied himself about the default on the part of the assessee of violation of the provisions of [section 269SS](#) of the Act by taking the alleged loan of Rs. 15 crores in cash." The relevant paras of ITAT's order are as under:

"5. We have considered the rival submissions as well as the relevant material on record. Since the assessee has raised a legal issue regarding validity of the order passed under [section 271D](#) as barred by limitation, therefore, we first take up the issue of limitation. The Additional CIT has initiated the penalty proceedings under [section 271D](#) by issuing the show cause notice dated 1st September, 2017 as under

XXX (not reproduced)

The said show cause notice was issued by the Additional CIT on the basis of the letter dated 09.08.2017 of the Assistant Commissioner of Income-tax, Circle-1, Kota being the reference for levy of penalty. For ready reference, we reproduce the reference letter of the Asstt. CIT for levy of penalty as under :-

XXX (not reproduced)

This reference was made on the basis of the documents seized from the possession of Shri DP Sehgal during the course of search and seizure action

under [section 132\(1\)](#) on 19.12.2014. The AO has also made a reference in the said letter of summons issued under [section 131](#) on 01.04.2015 by the DDIT Investigation, Jaipur. The DDIT Jaipur vide letter dated 23.10.2015 informed the ACIT/AO about the contravention of provisions of [section 269SS](#) of the IT Act by the assessee and appropriate action under the provisions of the Act has to be initiated. Thus the initiation of penalty proceedings by issuing the show cause notice dated 01.09.2017 is based on the information received by the AO of the assessee from the DDIT Investigation Jaipur vide letter dated 23rd October, 2015. [Section 275](#) provides the limitation for imposition of penalty under [Chapter-XXI of the IT Act](#). Since in the case in hand, the penalty under [section 271D](#) is not imposed pursuant to any assessment-order, therefore, clause (c) of [section 275\(1\)](#) is relevant for the purpose of limitation for passing the order under [section 271D](#) of the IT Act. For ready reference, we reproduce the provisions of [section 275\(1\)](#) as under :-

"275. (1) No order imposing a penalty under this Chapter shall be passed--

(a) in a case where the relevant assessment or other order is the subjectmatter 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 Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later;

(b) in a case where the relevant assessment or other order is the subjectmatter 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."

Thus no order imposing a penalty shall be passed after expiry of financial year in which the proceedings in the course of which action for imposition of penalty has been initiated are completed or 6 months from the end of the month in which the action for imposition of penalty is initiated whichever period expires later. The plain reading of this clause reveals that in case the proceedings in the course of which action for imposition of penalty has been initiated in the financial year, then the order for penalty shall not be passed after the expiry of the said financial year. However, there may be instances when such proceedings are completed at the fag end of the financial year to say in the month of March itself, then it is practically not possible to pass a penalty order before 31st March of the same financial year. Therefore, the second limb of this clause is relevant which gives 6 months from the end of the month in which action of imposition of penalty is initiated. In the case in hand, the action for imposition of the penalty was initiated vide letter dated 23rd October, 2015 whereby the DDIT Investigation-3, Jaipur sent information along with the document to the AO for his perusal and necessary action. These are the proceedings from which the AO has satisfied himself about the default on the part of the assessee of violation of the provisions of [section 269SS](#) of the Act by taking the alleged loan of Rs. 15 crores in cash. Though there was subsequent search and seizure action in the case of the assessee on 07.09.2017, however, those proceedings were subsequent to the satisfaction of the AO as well as initiation of the penalty proceedings by issuing show cause notice dated 01.09.2017. Therefore, for the purpose of limitation under [section 275\(1\)](#) what is relevant is the communication from the DDIT Investigation-3, Jaipur to the ACIT Circle-1, Kota vide letter dated 23rd October, 2015. Therefore, the limitation would reckon from the end of the month of October, 2015 and shall expire on the expiry of 6 months from the end of the month of October, 2015. In other words, the limitation for passing the penalty order under [section 271D](#) shall expire on 30th April, 2016. The Agra Bench of the Tribunal in case of [Sharda Educational Trust vs. ACIT](#) (supra) has considered this issue of limitation for passing the order under [section 271D](#) in para 13(1) as under :-

"13. After having considered the rival submissions, facts and circumstances of the case, provisions of [s. 275\(1\)\(c\)](#) of the Act and aforesaid various decisions and the Circular No. 387 relied upon by the counsel for the assessee and the fact that the learned Departmental Representative has not brought any decision contrary to various decisions relied upon by the counsel for the assessee, to our notice at the time of hearing, we are of the opinion that the assessee is to succeed on all counts such as ;

(i) In the present case, it is an admitted fact that neither the assessee had furnished any return for the asst. yr. 1996-97, nor any assessment was made nor any proceedings under the [IT Act](#) relating to the assessee was pending before the IT authorities on 12th June, 2003, or later on, till the date of levy of penalty under [s. 271D](#), i.e., on 12th June, 2003, when the proceedings were initiated or on 11th Dec., 2003, when the penalty order was passed and therefore, the penalty proceedings having not been initiated during the course of any proceedings, the same were illegal and bad in law.

It is also an admitted fact that the penalty proceedings in question were initiated after a lapse of a period of more than seven years. Consequently, we are unable to uphold the levy of penalty. Our conclusion is supported by the decision of Tribunal, Cochin Bench, in the case of [Noble Pictures](#) (supra), wherein it has been held that the penalty proceedings under [s. 272A](#) having been initiated after a period of more than 6 years were barred by limitation, and also by the decision of Delhi High Court in the case of [CIT vs. Rajinder Kumar Somani](#) (supra), which had been followed by the Tribunal in the case of [Noble Pictures](#) (supra)."

In the case in hand, the AO has not satisfied himself during the assessment proceedings or any other proceedings under the [IT Act](#) but this satisfaction of the AO as revealed from the reference letter is based on the information and document received from the Investigation Wing, Jaipur. Therefore, even if the said correspondence is considered as part of the proceedings of investigation carried out by the Jaipur Investigation Wing in case of Shri DP Sehgal, the limitation will reckon when the said investigation proceedings were completed and thereafter the information was sent by the Investigation Wing to the AO of the assessee. The Hon'ble Jurisdictional High Court in case of [CIT vs. M.A. Presstressed Works](#) 220 ITR 226 (Raj.) has considered the aspect of initiation of penalty proceedings as under:-

"We have considered the submissions made by learned counsel for the Revenue. [Section 274](#) of the Income-tax Act provides the procedure for imposing the penalty while [section 275](#) sets out the time-limit within which the penalty proceedings must be completed. [Section 275](#) requires to complete the penalty proceedings within two years from the end of the financial year in which the proceedings in the course of which the action for imposition of penalty has been initiated, are completed. But where the assessment order or any other order is the subject-matter of appeal before the Deputy Commissioner (Appeals) or the Commissioner of Income-tax (Appeals) or to the Income-tax Appellate Tribunal, the period for completing the penalty proceedings will be either a two year period from the end of the financial year in which the proceedings, in the course of which the action for imposition of the penalty was taken, are completed, or a period of six months from the end of the month in which the order of the appellate authority is received by the Commissioner, whichever period expires later. [Section 275](#), which applies to the case of the assessee, reads as under:

"275. Bar of limitation for imposing penalties. -- (1) No order imposing a penalty under this Chapter shall be passed--

(a) in a case where the relevant assessment or other order is the subjectmatter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under [section 246](#) or an appeal to the Appellate Tribunal under sub-section (2) of [section 253](#), after the expiration of the period of--

- (i) two years from the end of the financial year in which the proceedings, in the course of which the action for imposition of penalty has been initiated, are completed, or*
- (ii) six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or,*

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as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

(b) *in any other case, after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed."*

Section 275 divides the cases into two categories : the first category of cases is where the assessment order or the order to which proceedings for imposition of penalty relate, was the subject-matter of appeal under section 246 or an appeal under section 253. The limitation for the cases falling under this category, is two years from the end of the financial year in which the proceedings, in the course of which the action for imposition of penalty has been initiated, were completed; or six months from the end of the month in which the order of the appellate authority was received by the Commissioner, whichever period expires later. The second category covers all other cases not falling within category No. 1 and the limitation provided for these cases is within two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. The words "in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed" used in section 275 indicate the proceedings in which the income-tax authority is satisfied about the default which attracts the penalty and not with respect to any other proceeding in which the order like the cancellation of the registration, etc., has been passed. It is the assessment order or any other order passed in the proceeding in the course of which it is found that the assessee has brought himself within the mischief of the penalty proceedings. In the present case, the order, in which the proceedings for imposition of penalty were initiated, was passed on July 30, 1983, which was subjected to appeal and the appeal was dismissed on February 24, 1984."

The Hon'ble High Court has observed that the words "in which the proceedings in course of which the action for imposition of penalty has been initiated, are completed" used in section 275 indicate the proceedings in which the Income Tax Authorities satisfied about the default which attracts the penalty and not with respect to any other proceedings in which the order, like cancellation of registration has been passed. In the case in hand, the taxing authority has exhibited his satisfaction about the default of section 269SS in the investigation proceedings carried out by the Investigation Wing in case of Shri DP Sehgal and finally the said satisfaction was communicated to the AO of the assessee vide letter dated 23rd October, 2015. Hence what is relevant is the said letter dated 23rd October, 2015 whereby it was communicated to the AO and based on the said information and material, the AO further made a reference to the Additional CIT for levy of penalty. Thus the limitation for passing the order for levy of penalty under section 271D would reckon from the end of the October, 2015 and shall expire on 30th April, 2016 being the period of 6 months from the end of the said month of October, 2015. The penalty order passed under section 271D in the case of assessee is dated 11.10.2017 which is barred by limitation and, therefore, the same is

liable to be quashed. We make it clear that the subsequent search and seizure action under [section 132](#) of the IT Act conducted in the case of assessee on 7th September, 2017 would not extend the period of limitation when the penalty proceedings were already initiated by issuing show cause notice dated 01.09.2017 which is based on the satisfaction vide letter dated 23rd October, 2015. It is not understandable as to why the AO has not initiated the proceedings under [section 271D](#) after receiving the said information and documents vide letter dated 23rd October, 2015 till he has made the reference on 09.08.2017. **Accordingly, we hold that the impugned penalty order passed under [section 271D](#) dated 11.10.2017 is illegal being barred by limitation."**

[Emphasis supplied]

11. Ld. AR quoted some more decisions where the starting point for the purpose of section 275(1)(c) had been construed as the date on which the AO wrote letter to the Competent Officer recommending issuance of showcause notice:

- (a) PCIT Vs. Mahesh Wood Products Private Limited (2017) 394 ITR 312 (Delhi)
- (b) PCIT Vs. JKD Capital & Finlease Ltd. (2015) 378 ITR 614 (Delhi)
- (c) PCIT Vs. Rishikesh Buildcon Private Limited (2023) 451 ITR 108 (Delhi)

12. With these submissions, Ld. AR prayed to quash the penalty-orders as time-barred.

13. Per contra, Ld. DR submitted that in Para 20.5 of assessment-order, there is no initiation of penalty-proceedings by AO; the AO has merely mentioned that the provisions of section 269SS/T need to be invoked and shall accordingly be referred to JCIT (Central), Indore. He also referred immediate next Para 20.6 of assessment-order wherein the AO has mentioned that he was satisfied that the assessee had concealed income and therefore penalty proceeding u/s 271(1)(c) is hereby initiated. Thus, a

conjoint reading of both paras 20.5 and 20.6, Ld. DR submitted, clearly show that the AO initiated penalty proceeding u/s 271(1)(c) but not u/s 271D as involved in present appeals. He submitted that the case of **Thapar Homes (supra)** relied by Ld. AR is very much distinguishable since in that case, the AO himself initiated penalty-proceedings in assessment-order. He submitted that the **Ram Kishan Verma (supra)** decided by ITAT, Jaipur is also distinguishable for the reason that in that case, the AO received information from Investigation Wing pursuant to which the penalty was imposed; the penalty in that case was not pursuant to assessment-order whereas in present case, the imposition of penalty is after assessment-order. Furthermore, in **Ram Kishan Verma's** case, there was a huge gap at the level of AO in initiating penalty proceeding.

14. Ld. DR then relied upon a judgement of Hon'ble Kerala High Court in **Grihlakshmi Vision Vs. Addl. CIT (2015) 63 taxmann.com 196 (Kerala)** to contend that their lordship have held as under:

"10. Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under [Section 271D](#) and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply.

11. The only case of the assessee is that if the period of limitation prescribed in [Section 271\(1\)\(c\)](#) is reckoned from the date of the assessment order dated 6.11.2007, the penalty order passed by the Joint Commissioner on 29.7.2008 is beyond the time permitted in the above section. As we have already held, the initiation of the penalty proceedings is not by the Assessing Officer but by the Joint Commissioner and if that be so, the order levying penalty passed by the Joint Commissioner is within the time prescribed in [Section 275\(1\)\(c\)](#)."

15. With these submissions, Ld. DR strongly supported the order of CIT(A) and prayed to uphold the same.

16. We have considered rival submissions of both sides and perused the documents including orders of lower-authorities to which our attention has been drawn by parties. The primary controversy in present appeals is whether or not the penalty-orders were time-barred? Admittedly, the applicable provision of law is section 275(1)(c). The facts explained by parties are such that during the course of search proceeding conducted by department u/s 132, certain material was found and seized from factory premise of a company named M/s Jaideep Ispat and Alloys Pvt. Ltd. The AO, from seized material, observed certain loans having been taken by assessee in cash in violation of section 269SS which attracts penalty u/s 271D. Hence, the AO firstly noted in assessment-order dated 27.12.2017 about invocation of provisions of section 269SS. Then, the AO referred matter to Competent Officer on 13.06.2018 for imposition of penalty. The Competent Officer issued show-cause notice to assessee on 29.10.2018 and finally passed penalty-order on 28.03.2019 imposing penalties u/s 271D. With this chronology of events, the assessee claims that the penalty-orders passed on 28.03.2019 were time-barred whereas the CIT(A) has held that they were

within time. Basically, the point of controversy between parties is as to what is the starting point for reckoning the limitation prescribed in section 275(1)(c)? While the assessee claims that the contravention of section 269SS was found by AO in assessment-proceedings of assessee, hence the starting point shall be the date on which the AO passed assessment-order (27.12.2017) or at best it could be the date on which the AO made a reference/recommendation to the Competent Officer (13.06.2018), the lower-authorities are claiming it to be the date on which the Competent Officer issued show-cause notice to assessee (29.10.2018). On a careful consideration of various decisions cited before us as noted above, we find that in ***Thapar Homes (supra)***, Hon'ble Delhi High Court accepted the date of assessment-order as starting point. Hon'ble High Court further observed that if the date of issuance of show-cause notice by the Competent Officer is taken as starting point, the revenue can always extend the limitation period beyond the timeline prescribed in section 275(1)(c). Then, in ***Ram Kishan Verma (supra)***, the Jaipur Bench of ITAT has accepted that the starting point would be the date on which the AO received information from DDIT about commitment of default by assessee. We may gainfully refer a recent decision of ***ITAT, Chennai in DCIT, Central Circle, 2(2), Chennai Vs. Subramaniam Thanu, Chennai, ITA 785, 786, 787 & 788/Chny/2023 & C.O. 40, 41, 42 & 43/Chny/2023, dated 13.03.2024*** wherein an identical issue has been decided. The relevant paras of order are reproduced below:

"12. In so far as another legal ground raised by the assessee before the Id. CIT(A) with regard to the limitation, by following the judgement of the Hon'ble Delhi High Court in the case of **PCIT v. Mahesh Wood Products P Ltd. (2017) 394 ITR 312 (Delhi)**, the Id. CIT(A) has considered this legal ground and passed a detailed order, which is reproduced as under:

"25. Another legal ground raised by the appellant by way of Additional Ground No.1 is that the penalty order is barred by limitation of time as the said order has not been passed within 6 months from the end of the month in which the reference was made by the AO to the Addl. CIT for initiation of penalty proceedings u/s 271D. In support of this contention, the appellant placed reliance on the decision of Hon'ble Delhi High Court in the case of Principal CIT Vs Mahesh Wood Products P Ltd (2017) 394 ITR 312 (Delhi).

26. The legal ground raised by the appellant has been carefully examined. In the said decision, the Hon'ble Delhi High Court held that the date on which reference was made by the AO to the Addl. CIT requesting for initiation of penalty proceedings u/s 271D is required to be considered as the date of initiation of penalty proceedings and the limitation of time of 6 months from the end of the month in which action for imposition of penalty is initiated as laid down in sec 275(1)(c) has to be reckoned from the said date and not from the date on which the penalty show-cause notice is issued by the Addl. CIT. The relevant portion of the decision of Hon'ble High Court is extracted as under:

"However, this question came up for consideration in 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 a letter to the 4CIT 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."

27. In the present case, the AO made reference to the Addl. CIT informing him that the appellant has violated the provisions of 269SS and requesting him to consider initiation of penalty proceedings u/s 271D vide letter dated 15.03.2021. As per the decision of Hon'ble Delhi High Court mentioned above, the said date of 15.03.2021 is required to be considered as the date of initiation of penalty proceedings.

Consequently, the limitation of time for passing the penalty order u/s 271D expired on 30.09.2021. However, the penalty show-cause notice was issued by the Addl. CIT on 02.11.2021 and the penalty order was passed on 30.05.2022. It is therefore evident that the penalty order has not been passed within the statutory time limit which lapsed on 30.09.2021. In view of this reason, it is held that the penalty order is time barred and the same is legally unsustainable.

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28. In view of the aforesaid discussion, the penalty of Rs.17,00,00,000/- levied u/s.271D of the Act is directed to be deleted. The Additional Grounds of appeal Nos.1 and 2 are accordingly allowed.

13. We find that Ld. CIT(A) has followed the judgement of the Hon'ble Delhi High Court in the case of **PCIT v. Mahesh Wood Products P Ltd. (supra)** and decided the additional legal ground in favour of the assessee. Respectfully following the ratio of aforesaid decision, we find no infirmity in the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue stand dismissed."

17. Since the ITAT, Chennai has followed **Mahesh Wood's** decision, we also re-produce the entire order of that decision of Hon'ble Delhi High Court for an immediate reference:

"1. These are two appeals filed by the Revenue under [Section 260A](#) of the Income Tax Act, 1961 ('Act') against the order dated 24th May, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 6256/Del/2013 and 6257/Del/2013 for the Assessment Year ('AY') 2009-10.

2. The short question urged by the Revenue is whether the ITAT erred in law by holding that the order imposing the penalty was not passed within the time limit laid down under [Section 275\(1\)\(c\)](#) of the Act.

3. Pursuant to a search operation, a notice under [Section 153A](#) of the Act was issued to the Assessee, leading to the passing of an Assessment Order by the Assessing Officer ('AO') on 30th December, 2011 for the AY in question. As rightly pointed out by learned counsel for the Assessee, before issuance of notice under [Section 153A](#) of the Act, approval of the Joint Commissioner of Income Tax ('JCIT') would have been taken for issuing the notice under [Section 153 A](#). As it transpires, in the Assessment Order itself, there was no initiation of penalty proceedings. More than six months thereafter, on 23rd July, 2012, the AO made a reference to the Additional Commissioner of Income Tax ('ACIT') on the basis of which a notice was issued on 28th August, 2012 by the ACIT asking the Assessee to show cause as to why penalty be not levied under [Sections 271D](#) and [271E](#) of the Act as a result of the contravention of [Sections 269SS](#) and [269T](#) of the Act. A further notice was sent on 25th September, 2012, seeking the Assessee's reply, which ultimately was submitted on 10th October, 2012.

4. In the reply itself, the Assessee contended that the penalty proceedings were barred by limitation under [Section 275\(1\)\(c\)](#) of the Act, which reads as under:

"275. Bar of limitation for imposing penalties (1) No order imposing a penalty under this Chapter shall be passed--

(a)...

(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."

5. After considering the reply, the ACIT, on 26 th February, 2013, passed the two penalty orders in which the plea of limitation was negated. It was noted that initiation of penalty proceedings was not linked to any pending assessment proceedings. The Assessee then went in appeal before the CIT(A). Two separate orders dated 10th September, 2013 were passed and the penalty imposed was cancelled on merits. However, on the aspect of penalty orders being barred by limitation, the CIT(A) negated the plea of the Assessee.

6. Aggrieved by the above order of the CIT(A), the Revenue filed the aforementioned two appeals before the ITAT. In the impugned common order the ITAT referred to its earlier decision in [DCIT, Central Circle-03, New Delhi v. Raj Katha Products P. Ltd.](#) (order dated 8th March, 2016) which, in turn, relied upon on the decision of this Court in *PCIT-5 v. JKD Capital & Finlease Ltd.* (2015) 378 ITR 640 (Del). The ITAT, accordingly, held that the penalty orders were barred by limitation under [Section 275\(1\)\(c\)](#) of the Act.

7. Mr. Sanjay Kumar, learned counsel for the Revenue has sought to place reliance on the decision of this Court in [Commissioner of Income Tax \(TDS\) v. IKEA Trading Hong Kong Ltd.](#), [2011] 333 ITR 565(Del) to urge that it is the date of issuance of the Show Cause Notice ('SCN') that would be the relevant starting point. Accordingly he submits that the date of issuance of the SCN by the ACIT being 28th August, 2012, limitation would expire on 28th February, 2013. Therefore, the penalty orders having been passed on 26th February, 2013 would not be barred by limitation. He also sought to distinguish the decision of this Court in *PCIT-5 v. JKD Capital & Finlease Ltd.* (supra) by stating that in the said case, the gap between the intimation sent by the AO recommending initiation of penalty proceedings and the action taken by the ACIT was nearly five years, whereas in the present case, it was slightly over one month.

8. At the outset, the Court observes that no question arose in [Commissioner of Income Tax \(TDS\) v. IKEA Trading Hong Kong Ltd.](#) (supra) as to whether the starting point of limitation could be a date earlier than the issuance of the SCN, viz., the date on which the AO wrote a letter to the ACIT recommending such initiation. No such contention appears to have been raised or dealt with in the said case. Therefore, [the said decision](#) is distinguishable on facts.

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 a 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.

10. In the present case, the limitation in terms of [Section 275 \(1\) \(iii\)](#) of the Act began to run on 23rd July, 2012 and the last date for passing the penalty orders was 31st January, 2013. Therefore, the penalty orders issued on 26th February 2013 were clearly barred by limitation.

11. No substantial question of law arises for consideration from the impugned common order of the ITAT. The appeals are dismissed.

CM APPL. 41567/2016 in ITA No. 786/2016

12. Allowed, subject to all just exceptions."

18. Thus, in **Mahesh Wood's** case, the Hon'ble Delhi High Court has held that the date on which the AO made recommendation/reference to the Competent Officer shall be the relevant date for reckoning the limitation.

19. Therefore, the view coming from various decisions narrated above is such that the date on which the AO passed assessment-order or at best the date on which the AO made a reference/recommendation to the Competent Officer (Addl. Commissioner in present appeals), shall be the starting point and not the date on which the Competent Officer issued show-cause notice to assessee u/s 274 for imposition of penalty. At this stage, we may also add one more point that even if there is any cleavage of opinion in the decision of **Hon'ble Kerala High Court in Grihlakshmi Vision (supra)** and **Hon'ble Delhi High Court in Thapar Homes / Mahesh Wood Products P Ltd. / JKD Capital & Finlease Ltd. (supra)**, there is no decision of Hon'ble Jurisdictional High Court of Madhya Pradesh brought to our notice by

parties. Therefore, in the situation, the assessee shall be entitled to the benefit of Hon'ble Supreme Court in **CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC)** according to which a view favourable to assessee shall apply.

20. The above discussion brings us to conclude that in present matters, the impugned penalty orders passed on 28.03.2019 were time-barred liable to be quashed. Being so, we quash the penalty orders passed by AO. The assessee succeeds on this legal ground itself.

21. Since we have already quashed penalty-orders on legality aspect, other grounds/issues are not required to be adjudicated at this stage.

Hence, they are kept open undecided.

22. Resultantly, these appeals are allowed.

*Order pronounced in open court / by putting on notice board as per Rule 34 of I.T.A.T.
Rules, 1963 on 25/10/2024*

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

दिनांक/ Dated : 25/10/2024

Dev/Sr. PS

Copies to:

(1)	The appellant
(2)	The respondent
(3)	CIT
(4)	CIT(A)
(5)	Departmental Representative
(6)	Guard File

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore