

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 6423/Del/2016 (A.Y.2009-10)**

DCIT, Central Circle-15	Vs	M/s. THAPAR HOMES LIMITED, B-10, SHIVALIK, MALVIYA NAGAR, NEW DELHI-110017 <b>PAN No:AAECM0840R</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. VIKASH Jain, Adv, Ms. Shrawani, Adv & Sh. Hardik Jayal, Adv
Respondent by	Ms. Jaya Chaudhary, CIT(DR)

Date of Hearing	21/11/2024
Date of Pronouncement	27/11/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM :**

This appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeal) ('Ld. CIT(A)' for short], dated 09/09/2016 for the Assessment Year 2009-10.

2. The grounds of appeal are as under:-

*“1. On the facts & circumstances of the case the CIT(A) has erred in law in holding that the order u/s 271E passed by the Addl. CIT imposing penalty of Rs. 3,44,15,000/- was barred by limitation.*

*2. On the facts & circumstances of the case the CIT(A) has erred in law in holding that the order u/s 271E was barred by limitation without appreciating that the order was passed within 6 months of initiation of proceeding by Addl. CIT, who was the competent authority to levy this penalty”.*

3. Brief facts of the case are that, the Assistant CIT, Central-17, vide letter dated 07/06/2011 reported that the Assessee had entered into transaction in contravention of provision of Section 269T of the Income Tax Act,1961('Act' for short). Pursuant to the same, a penalty proceedings has been initiated against the Assessee by issuing a show cause notice dated 13/06/2011, 12/07/2011 and 19/12/2011. The Assessee filed a reply on 20/06/2011. An order of penalty came to be passed on 25-30/12/2011 u/s 271E of the Act by imposing penalty of Rs. 3,44,15,000/- i.e. equal to the amount paid contrary to provision Section 269T of the Act. Aggrieved by the order of the penalty, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 09/09/2016, allowed the Appeal for the Assessee by deleting the penalty.

4. Aggrieved by the order of the Ld. CIT(A), the Department of Revenue preferred the present Appeal on the grounds mentioned above.

5. The Ld. Departmental Representative vehemently argued that the Ld. CIT(A) has erred in law holding that order u/s 271E was barred by limitation without appreciating that the order was passed within six months of initiation of proceedings by Addl. CIT, who was the competent authority to levy the penalty. The Ld. Departmental Representative relying on the order of penalty, sought for setting aside the order impugned and prayed for upholding the order of penalty.

6. Per contra, the Ld. Assessee's Representative relying on the order of the Ld. CIT(A), submitted that the order of the Ld. CIT(A) is well reasoned and the same has been passed after relying on the various judicial precedents and the CBDT Circular No. 9 dated 26/04/2016, thus submitted that the Appeal of the Revenue is devoid of merit.

7. We have heard both the parties and perused the material available on record. The Ld. CIT(A) while deleting the order of penalty in following manners:-

8. *I have considered the facts of the case, the basis of penalty imposed by the AO and the arguments of the AR during penalty as well as appellate proceedings. It is seen that the AO vide its order dated 31.12.2010 had made additions amounting to Rs.3,44,15,000/- on account of entries at Sr. No. 1 to 15 on documents annexured as documents marked as A1-A6 of Annexure 6 seized found from the premises at A-48, Vasant Vihar, New Delhi. The record of*

*penalty proceedings had been called for and examined in order to verify the claim of the appellant on the following issues:-*

- i. Recording of satisfaction for initiation of penalty u/s 271E by the AO in the assessment order.*
- ii. Issue of penalty show cause notice dated 31.12.2010 u/s 274 read with section 271E by AO.*
- iii. Issuance of show cause notice dated 13.6.2011 by Addl.CIT (Range II), New Delhi u/s 271E.*
- iv. Reply of the appellant with respect to the above mentioned show cause notice vide letter 20.6.2011*
- v. Penalty order passed by Addl. CIT (Range II) u/s 271E on 30.12.2011.*

*It is seen that the AO had initiated penalty proceedings u/s 271E for repaying the interest on loans otherwise than by crossed cheque/drafts. The AO further issued show cause notice u/s 274 read with section 271E on 31.12.2010. The matter had been intimated to the Addl.CIT by the AO vide his letter dated 7.6.2011 for finalization of the penalty proceedings as the competent authority to impose the penalty was Addl.CIT/JCIT and not AO. The show cause notice had been issued by the Addl.CIT vide notice dated 13.6.2011 which was replied by the appellant on 20.6.2011. It has been claimed by the appellant that provisions of section 275 (1)(c) were attracted in the case of assessee which read as under:-*

*"(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"*

*9. It was therefore contended that the penalty order should have been passed on or before dated 30.6.2011 whereas the same had been passed on 30.12.2011 and therefore the penalty order was barred by time limitation. The appellant has placed reliance on judgment of Hon'ble Jurisdictional High Court in the case of PCIT vs. JKD Capital & Finlease Ltd. ITA No. 780/2015 dated 13.10.2015. It is seen that there is no ambiguity with regard to the fact that the AO at the time of passing of the assessment order for the year under consideration had recorded his satisfaction on the issue of payment of interest otherwise than by crossed payee cheque/draft and in consequence thereof*

penalty notice had been issued on 31.12.2010 requiring the assessee to explain as to why penalty u/s 271E should not be imposed. The period of 6 months to pass the penalty order by the competent authority, in this case JCIT/Addl.CIT was to end on 30.6.2011 as per the provision of section 275(1)(c). The issue whether the limitation period as specified u/s 275(1)(a) of the Act would be applicable to the facts of the case or provision of section 275(1)(c) has been decided by the Hon'ble High Court of Rajasthan in the case of **Commissioner of Income-Tax vs Hissaria Bros. (2007) 211 CTR Raj 156, 2007 291 ITR 244 Raj** and following had been held:-

- "32. A close scrutiny of Section 275 which reproduced hereinabove shows L 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 case where the relevant assessment order or other orders are the subject-matter of an appeal to the Commissioner (Appeals) under Section 246 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 6 months from the end of the month in which the order of Commissioner (Appeals) or, as the case may be, of the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later.
33. Apparently, Clause (a) governs the categories which are integrally related to the assessment proceedings and are not independent of it.
34. We have also noticed that this provision was brought into effect in 1970 with effect from April 1, 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.
35. We have also noticed that Sections 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.
36. 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 6 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 commensurating 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.*

37. *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.*
38. *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 proceeding 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 Commissioner Of Income-Tax vs Hissaria Bros. on 21 July, 2006 Indian Kanoon 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.*
39. *Thus, both on the ground that the transaction in question retention of sale price by the kachha adhatiya 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 respondents."*

*The department went into appeal with the hon'ble apex court and vide its order dated 22.8.2016, the hon'ble apex court held as under:-*

*"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. Pending application, if any, stands disposed of."*

10. *This issue had been further clarified by the Circular No. 10 of 2016 dated 26.4.2016 of CBDT as under:-*

*"1. The issue whether the limitation for imposing of penalty under sections 271D and 271E of the Income Tax Act, 1961 (hereinafter referred to as the ACT) is determined under Section 275(1)(a) or Section 275(1)(c) of the Act, has given rise to considerable litigation.*

*2. The Hon'ble Delhi High Court in the case of CIT v. Worldwide Township Projects Ltd., vide its order dated 21st May, 2014 in I.T.A. No. 232 of 2014, considered the issue and observed that, "It is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. In this view section 275(1)(a) of the Act would not be applicable and the provisions of section 275(1)(c) would be attracted." The judgment has been accepted by the Central Board of Direct Taxes.*

*3. In view of the above, it is settled position that the period of limitation of penalty proceedings under section 271D and 271E of the Act is governed by the provisions of section 275(a)(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.*

*4. Accordingly, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various courts/tribunals may not be pressed upon.*

*5. The above may be brought to the notice of all concerned."*

11. *The next vital issue here is whether the period of 6 months as specified u/s 275(1)(c) has to be reckoned from the issuance of notice by ICIT/Addl.CIT or from the issuance of satisfaction/notice by the AO. The hon'ble jurisdictional High Court in the case of PCIT VS. JKD Capital & Finlease Ltd. as already highlighted above has been categorical in holding that the period of limitation as specified u/s 275(1)(c) starts with issuance of notice by the AO and not by the JCIT/Addl.CIT. The specific observations of the Hon'ble Court on the issue are reproduced as under:-*

*"Mr. Kamal Sawhney, learned Senior standing counsel appearing for the Revenue submitted that the AO has no power to initiate the penalty proceedings under Section 271-E of the Act and it was only the Joint CIT who could have done so. Therefore, for the purpose of limitation under Section 275 (1) (c), the relevant date should be the date on which notice in relation to the penalty proceedings were issued. In the present case, as the Additional CIT issued notice to the Assessee on 12th March 2012, the order of the Additional CIT passed on 20th March, 2012 was within limitation. **We are unable to agree with the above submission of learned Standing counsel for the Revenue.** Section 275 (1) (c) reads as under:*

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

*In terms of the above provision, there are two distinct periods of limitation for passing a penalty order, and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed in the first instance. In the present case, at the level of the AO, the quantum proceeding was completed on 28<sup>th</sup> December, 2007. Going by this date, the penalty order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.*

*Considering that the subject matter of the quantum proceedings was the noncompliance with Section 269 T of the Act, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. In other words, the*

*initiation of penalty proceedings did not hinge on the completion of the appellate quantum proceedings.*

*In fact, when the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271- E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (C). In that view of the matter, the order of the CIT (A) which has been affirmed by the impugned order of the ITAT does not suffer from any legal infirmity. No substantial question of law arises for determination. The appeal is dismissed."*

12. *It is further seen that circular has been issued by the CBDT No.9 dated 26.4.2016 as under:*

*"1. It has been brought to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that there are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E of the Income Tax Act, 1961 (hereafter referred to as the Act) commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income-tax) or at level of the Range authority i.e., the Joint Commissioner of Income-tax/Addl. Commissioner of Income-tax.*

*2. Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty, i.e., Range Head while others have held that even though the Assessing Officer is not competent to impose the penalty, the limitation commences at the level of the Assessing Officer where the Assessing Officer has issued show-cause notice or referred to the initiation of proceedings in assessment order.*

- 3. On careful examination of the matter, the Board is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a "Departmental View".*
- 4. The Hon'ble Kerala High Court in the case of Grihalakshmi Vision v. Addl. CIT, vide its order dated 7th August, 2015 in I.T.A. Nos. 83 and 86 of 2014, observed that, "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 the 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 271E 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.*

- 5. The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income-tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard, The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(C) of the Act.*
  - 6. Where any High Court decides this issue contrary to the "Departmental View, the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgement to the notice of the Central Technical Committee. The CTC shall examine the said judgement on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.*
  - 7. The above clarification may be brought to the notice of all officers."*
- 13. The perusal of the circular no. 9 issued by the CBDT as reproduced above shows that the departmental view as expressed by the Hon'ble Kerala High Court in the case of Grahaxmi Vision Ltd. vs. Addl.CIT would not be operative in the area falling in the jurisdictional High Court which has contrary view on the issue. It has already been highlighted that the Hon'ble Delhi High Court has held that the period of limitation to be starting from the date of issuance of notice by the assessing officer and not from the issuance of penalty notice issued by the JCIT/Addl.CIT. The facts of the case under consideration shows that the penalty notice had been issued by the AO on 31.12.2010. along with the passing of the assessment order and subsequent issue of another notice by the Addl.CIT on 13.6.2011 would not mean that initial notice issued by the AO*

*would cease to be valid and operative. Therefore the penalty to be imposed u/s 271E had to be done before 30.6.2011 and not 31.12.2011. In view of the above detailed analysis the penalty order passed by the Addl.CIT (Central) (Range -2) is beyond the period of limitation as specified u/s 275(1)(c). The same is therefore held to be null and void.*

8. It is well settled law that the period of limitation for initiating the penalty starts from the date of issuance of notice by the A.O. and not from the issuance of penalty notice by the JCIT/Addl.CIT. In the present case, the penalty notice has been issued by the A.O. on 31/12/2010 along with the passing of the assessment order and subsequent issue of another notice by Addl. CIT was on 30/06/2011. It would not mean that initial notice issued by the A.O. would be seized to be valid or operative. Thus, the imposition of penalty u/s 271E to be done before 30/06/2011 and not 31/12/2011. The Ld. CIT(A) by following the judicial precedents of the Hon'ble High Courts and the Apex Court and also following the CBDT Circular 9 dated 26/04/2016, deleted the penalty which requires no interference by the Tribunal. Finding no merit in the Grounds of Appeal of the Revenue, we dismiss the same.

9. In the result, the Appeal of the Revenue is dismissed.

Order pronounced in open Court on 27<sup>th</sup> November, 2024

**Sd/-**  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated: 27/11/2024

**DP/SPS**

Copy forwarded to:

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

ASSISTANT REGISTRAR, ITAT, NEW DELHI