

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “C” BENCH, BENGALURU**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

<b>ITA Nos.</b> 1629 to 1632 & 1654/Bang/2024
<b>Assessment Years:</b> 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19

M/s. Sri Muthu Cine Service No. 296, 16 <sup>th</sup> Cross, Sadashivnagar Upper Palace Orchards Bangalore – 560080 Karnataka  <b>PAN NO : AANFS4276K</b>	<b>Vs.</b>	Deputy Commissioner of Income Tax, Central Circle – 2(1), Bangalore - 560001
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri B. S. Balachandran, Advocate
<b>Respondent by</b>	:	Sri V. Parithivel, JCIT

<b>Date of Hearing</b>	:	09.10.2024
<b>Date of Pronouncement</b>	:	06.01.2025

**O R D E R**

**PER BENCH:**

These appeals at the instance of the assessee are directed against the orders of the Id. CIT (A)-15, Bengaluru, all dated 28.06.2024 passed for the AY 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19 separately. Since common legal ground with respect to limitation are raised in all these appeals, they are clubbed together, heard together and disposed of by a consolidated order for the sake of brevity & convenience.

**2.** The assessee has raised the following common grounds of appeal against the penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (in short “The Act”) in respect of AY 2014-15, 2015-16 and 2016-17 except change in figures:-

**LEGAL GROUNDS:**

1. The order dated 28 June 2024 passed by the learned Commissioner of Income-tax (Appeals)-15, Bengaluru ["CIT(A)"] under section 250 of the Income-tax Act, 1961 ("IT Act") dismissing the appeal filed by the Appellant and upholding the penalty order dated 15.02.2022 passed by the learned Assessing Officer, Deputy Commissioner of Income Tax, Central Circle - 2(1), Bengaluru ("AO") under section 271(1)(c) of the IT Act, is contrary to law and facts of the case and is passed in contravention of principles of natural justice.
2. The CIT(A) and AO has erred in dismissing the appeal without considering the submissions made by the Appellant thereby violating the principles of natural justice.
3. The CIT(A) and AO has erred and ought not have acted mechanically and has not objectively evaluated the merits of the case.

**GROUND ON MERITS:**

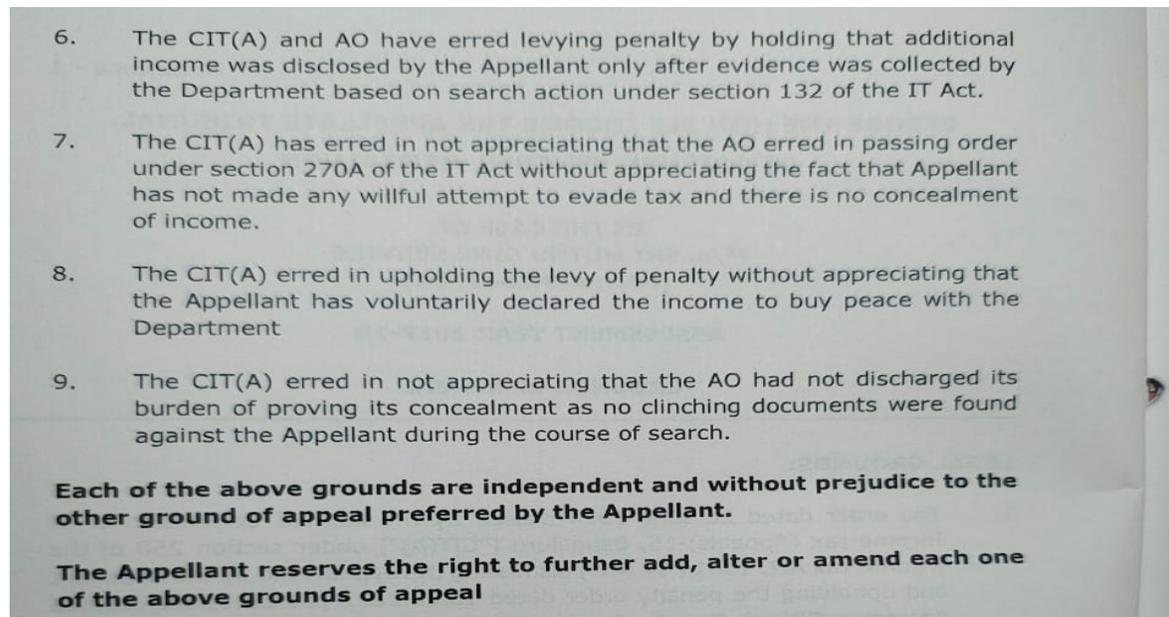
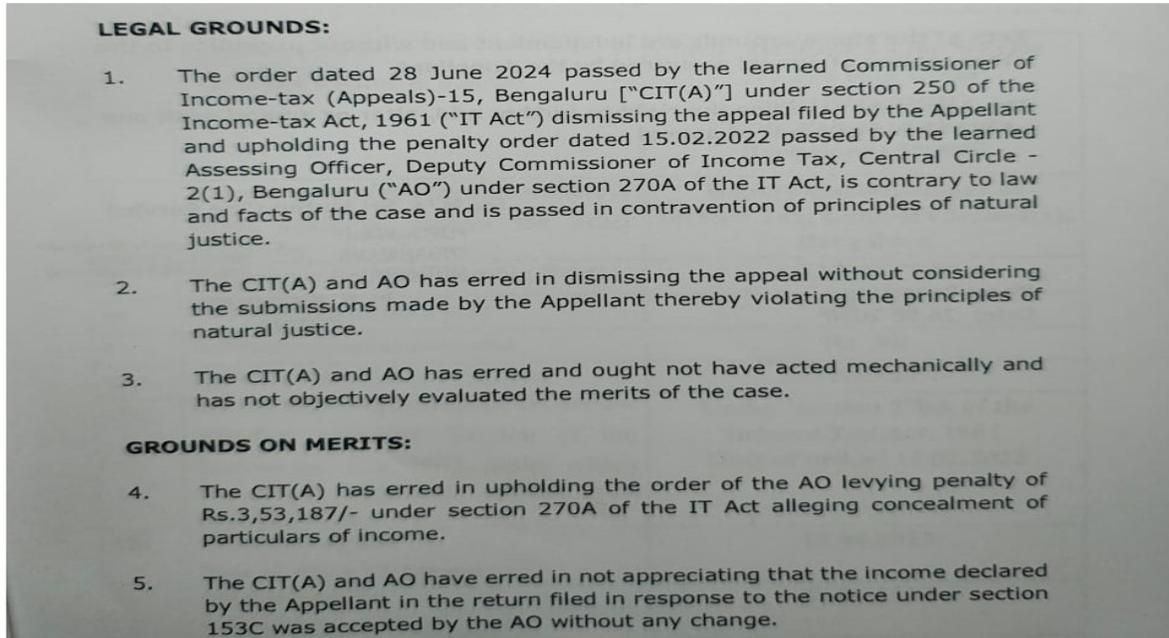
4. The CIT(A) has erred in upholding the order of the AO levying penalty of Rs.1,78,448/- under section 271(1)(c) of the IT Act alleging concealment of particulars of income.
5. The CIT(A) and AO have erred in not appreciating that the income declared by the Appellant in the return filed in response to the notice under section 153C was accepted by the AO without any change.

6. The CIT(A) and AO have erred levying penalty by holding that additional income was disclosed by the Appellant only after evidence was collected by the Department based on search action under section 132 of the IT Act.
7. The CIT(A) has erred in not appreciating that the AO erred in passing order under section 271(1)(c) of the IT Act without appreciating the fact that Appellant has not made any willful attempt to evade tax and there is no concealment of income.
8. The CIT(A) erred in upholding the levy of penalty without appreciating that the Appellant has voluntarily declared the income to buy peace with the Department
9. The CIT(A) erred in not appreciating that the AO had not discharged its burden of proving its concealment as no clinching documents were found against the Appellant during the course of search.

**Each of the above grounds are independent and without prejudice to the other ground of appeal preferred by the Appellant.**

**The Appellant reserves the right to further add, alter or amend each one of the above grounds of appeal**

**2.1** Further, the assessee has raised the following common grounds of appeal against the penalty u/s. 270A of the Act with respect to AY 2017-18 and 2018-19 except change in figures:



**3.** The brief facts of the case are that the assessee is a partnership firm, in which Shri. M S Puttaswamy and his wife Smt. Geetha Shivarajkumar are partners. A search u/s 132 of the Act was carried out in the case of

Shri. M S Puttaswamy on 03.01.2019. Analysis of incriminating evidences found and seized during the course of the search operation showed the materials were pertaining to and information contained therein were relating to the assessee. The assessee did not file its return of income u/s 139 of the Act for impugned assessment years. During the course of assessment proceedings, it was verified from records that the assessee has offered the income only under the head "income from business" in the return of income filed in response to notice u/s 153C of the Act for all these AY under appeal, which was admitted in the statement recorded u/s 132(4) of the Act on 04.01.2019 during the course of search proceedings. The assessment order u/s 153C of the Act was passed on 16.06.2021 by initiating the penalty proceedings. Further, the penalty notices were issued to the assessee u/s 271(1)(c) of the Act for the Asst. year 2014-15 to 2016-17 for the concealment of Income & u/s 270A of the Act for the Asst. year 2017-18 & 2018-19 for under reporting of income. All the show cause notices were issued to the assessee on 14.01.2022. The assessee in response requested for dropping of penalty mainly on the following reasons:

- a) The assessee had agreed to the income to be declared in the books during the search proceedings at their premises.
- b) The assessee had cooperated with the department during the assessment proceedings in getting the assessment completed.
- c) The assessee pursuant to notice u/s 153C has been duly filed within the stipulated time and taxes were paid promptly.
- d) The income returned was accepted as assessed income and as the true and correct income.

**3.1** Thereafter, the AO did not accept the contentions of the assessee & levied the penalty u/s 271(1)(c) of the Act for the Asst. year 2014-15 to 2016-17 for the concealment of Income & u/s 270A of the Act for the Asst. year 2017-18 & 2018-19 for under reporting of income.

**3.2** Aggrieved by the penalty orders, the assessee has filed the appeals before the Id. CIT(A) for all the impugned Asst. years.

**3.3** The Id. CIT(A) dismissed all these appeals u/s 250 of the Act dated 28.6.2024 by passing separate appellate orders by confirming the orders of the AO in levying the penalties.

**3.4** Aggrieved by the orders of Id. CIT(A), the assessee is in appeal before us.

**4.** At the outset, the Id. A.R. of the assessee vehemently submitted that all these appeals are barred by limitation as per the provisions contained in section 275(1)(c) of the Act i.e. the penalty orders were not passed within 6 months from the end of the month in which action for imposition of penalty were initiated & therefore all the penalty Orders are illegal, bad in law & liable to be quashed.

**5.** The Id. D.R. on the other hand supported the orders of the authorities below.

**6.** We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that on perusal of the Assessment Orders show that the AO initiated the penalty in the Assessment Order(s) itself. For the sake of brevity and convenience, we are depicting herewith the entire facts for all these assessment years in a tabular form as under:

Sl. No.	Particulars	AY 2014-15	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19
1.	Section under which penalty proceedings initiated in the assessment order/show cause notice	271(1)(c) For concealment of income	271(1)(c) For concealment of income	271(1)(c) For concealment of income	270A For under-reporting of income	270A For under-reporting of income
2.	Date on which assessment completed u/s 153C of the Act in which penalty proceedings are initiated u/s 271(1)(c)/270A of the Act	16.06.2021	16.06.2021	16.06.2021	16.06.2021	16.06.2021
3.	Show cause notices issued	14.01.2022	14.01.2022	14.01.2022	14.01.2022	14.01.2022
4.	Amount of penalty levied	Rs.1,78,448/-	Rs.83,430/-	Rs.1,33,488/-	Rs.3,53,187/-	Rs.4,20,586/-
5.	Date of passing penalty orders u/s 271(1)(c)/270A of the Act	15.02.2022	15.02.2022	15.02.2022	15.02.2022	15.02.2022
6.	6 months from the end of the month in which action for imposition of penalty initiated	31.12.2021	31.12.2021	31.12.2021	31.12.2021	31.12.2021
7.	Decision	Time barred	Time barred	Time barred	Time barred	Time barred

**6.1** Before proceeding further, it is apposite here to take note of section 275(1) of the Act for the purpose this case, which reads as under:

*“Section 275 in The Income Tax Act, 1961*

*275. [ Bar of limitation for imposing penalties. [Substituted by Act 42 of 1970, Section 50, for Section 275 (w.e.f. 1.4.1971).]*

*- [(1)] [Inserted by Act 4 of 1988, Section 115 (w.e.f. 1.4.1989).] 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 [\* \* \*] [Substituted by Act 4 of 1988, Section 116, for Clauses (a) and (b) (w.e.f. 1.4.1989).] Commissioner (Appeals) under section 246 [or section 246-A] [ Inserted by Act 10 of 2000, Section 70 (w.e.f. 1.6.2000).] 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 [\* \* \*] [ Inserted by Act 3 of 1989, Section 52.] 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 246-A, 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;] [ Inserted by Act 32 of 2003, Section 96 (w.e.f. 1.6.2003).]*

*(b)in a case where the relevant assessment or other order is the subject-matter of revision under section 263 [or section 264] [Inserted by Act 32 of 2003, Section 96 (w.e.f. 1.6.2003).], 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.”*

**6.2** On plain reading of the above, we find that, the provision of section 275(1)(c) of the Act is applicable in the present case. Since all these penalty orders for the assessment years 2014-15 to 2018-19 were passed only after 6 months from the end of the month in which action for imposition of penalty initiated as depicted in tabular form above, we accordingly held that penalty orders for the impugned Asst. years are barred by limitation and accordingly illegal, bad-in-law & void-ab-initio.

**6.3** By holding so, we also rely on the judgement Hon'ble Delhi High Court in the case of PCIT-7 Vs. Rishiksh Buildcon Pvt. Ltd. In ITA No.577/2018, 580/2018, 583/2018 dated 17.11.2022, the relevant para of which is reproduced as under:

7. *The relevant admitted facts for determining the controversy in the present appeals are:*

- a. *The quantum proceedings with respect to the three Assessee(s) were completed in December, 2008 and the penalty proceedings against the Assessee(s), inter alia under Section 271D of the Act for violating the provision of Section 269SS of the Act, had been initiated by the AO at the time of the completion of the said assessment.*
- b. *The SCNs under Section 271D of the Act were issued by prescribed authority on 24<sup>th</sup> March, 2009.*
- c. *The penalty order(s) were passed on 29<sup>th</sup> September, 2009.*

8. *The contention of the learned senior standing counsel for the Revenue that the date of the issuance of the SCNs would be the relevant starting point i.e., 24<sup>th</sup> March, 2009, was specifically noted and rejected by this Court in the Mahesh Wood Products Pvt. Ltd. (supra). The relevant portion of the said judgment reads as follows:-*

*“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 28 August, 2012, limitation would expire on 28 February, 2013. Therefore, the penalty orders having been passed on 26 February, 2013 would not be barred by limitation. He also sought to distinguish the decision of this Court in PCIT-5 v. JKD Capital & Finance 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.*

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9. *However, this question came up for consideration in PCIT v. JKD Capital & Finance 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."*

**(Emphasis Supplied)**

9. *The legal principle for determining the date of initiation of penalty proceedings has been settled by the predecessor bench of this Court in its decision of **JKD Capital and Finlease Ltd.** (supra) which reads as under: -*

***"2...While finalising the assessment order dated December 28, 2007 the Assessing Officer ("the AO") in the concluding paragraph issued a direction to initiate proceedings against the assessee under sections 271(1)(c) and 271E of the Act. Admittedly, under section 271E(2) of the Act, any penalty under section 271E(1) can only be imposed by the Joint Commissioner of Income-tax ("the Joint CIT"). Consequently, the Assessing Officer referred the matter to the Additional Commissioner of Income-tax.***

*3. A perusal of the order dated March 20, 2012, of the Additional Commissioner of Income-tax shows that a show-cause notice initiating penalty proceedings under section 271E was issued to the assessee on March 12, 2012, requiring it to explain as to why penalty should not be levied on it under section 271E on account of violation or the provisions of section 269T of the Act. With the assessee having failed to furnish the required information, the Additional Commissioner of Income-tax proceeded to confirm the penalty in the sum of Rs. 17,90,000.*

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***6.Mr. Kamal Sawhney, learned senior standing counsel appearing for the Revenue, submitted that the Assessing Officer has no power to initiate the penalty proceedings under section 271E of the Act and it was only the Joint Commissioner of Income-tax 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 Commissioner of Income-tax issued notice to the assessee on March 12, 2012, the order of the Additional Commissioner of Income-tax passed on March 20, 2012, was within limitation.***

7. ***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...***

***(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."***

8. ***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 Assessing Officer, the***

quantum proceedings was completed on December 28, 2007. Going by this date, the penalty order could not have been passed later than March 31, 2008. The second possible date is the expiry of six months from the month in which the penalty proceedings were initiated. With the Assessing Officer having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is June 30, 2008. The later of the two dates is June 30, 2008.”

*(Emphasis Supplied)*

10. *The contentions urged by the learned counsel for the Revenue in the present appeals are therefore reiteration of pleas which have been categorically rejected by the predecessor bench of this Court in the aforesaid judgments.*
11. *In the present appeals, a perusal of the assessment order(s) shows that the penalty proceedings were initiated by the AO in the assessment order(s) itself. Illustratively, the direction contained in the assessment order dated 17<sup>th</sup> December, 2008, pertaining to ITA No. 577/2018, Rishikesh Buildcon Pvt. Ltd. may be referred to, which reads as under:-*

*“... Initiate penalty proceedings u/s, 271(1)(c) for concealment of income & 271(1)(b) for non-compliance of statutory notices, & 271 D for violating the provisions of Section 269 SS as discussed above.”*
12. *The predecessor bench of this Court in the aforesaid judgments has held that where the AO has initiated the penalty proceedings in his/her assessment order, the said date is to be taken as the relevant date as far as the Section 275(1)(c) of the Act is concerned. In these cases, the quantum proceedings were completed by the AO on 17<sup>th</sup>/18<sup>th</sup> December, 2008, and the AO initiated the penalty proceedings in December, 2008, thus, the last date by which the penalty order could have been passed is 30<sup>th</sup> June, 2009. The six months from the end of the month from which action of imposition of penalty was initiated would expire on 30<sup>th</sup> June, 2009. However, in this case, admittedly, the penalty order(s) were passed on 29<sup>th</sup> September, 2009, and therefore, the ITAT rightly concluded that the order(s) were barred by limitation.*
13. *Consequently, we answer the question of law against the Revenue and in favour of the Assessee by holding that, in the facts and circumstances of the present appeals, the ITAT was correct in law in deleting the penalty imposed by the Additional Commissioner of Income Tax, under Section 271D of the Act, on the ground that the penalty order(s) dated 29<sup>th</sup> September, 2009, was passed beyond the time period prescribed by Section 275(1)(c) of the Act, the same having been passed after the lapse of six months from the end of the month in which the penalty proceedings were initiated by the AO.”*

**6.4** Therefore, respectfully following the judgement of Hon'ble Delhi High Court cited (supra), we have no hesitation to hold that all the penalty orders passed by the AO for all these assessment years under appeal are

barred by time and accordingly, we annul all the penalty orders for the impugned Asst. years as barred by time. It is ordered accordingly.

7. In the result, all these appeals filed by the assessee are allowed.

Order pronounced in the open Court on 6<sup>th</sup> Jan, 2025.

Sd/-

**(Waseem Ahmed)**  
**Accountant Member**

Sd/-

**(Keshav Dubey)**  
**Judicial Member**

Bengaluru,  
Dated: 6<sup>th</sup> Jan, 2025  
VG/SPS

Copy to:

1. The Appellant
2. The Respondent
3. The CIT, concerned
4. The DR, ITAT, Bengaluru
5. Guard File

By Order

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