IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1307/PUN/2024
Assessment year : 2010-11

DCIT, Central Circle 2(1), Pune	**Vs.**	Vinod Ramchandra Jadhav Plot No.42-44, Green Park Society, Viman Nagar, Pune – 411014
		PAN: AANPJ0592P
(Appellant)		**(Respondent)**

ITA No.2144/PUN/2024
Assessment year : 2010-11

Vinod Ramchandra Jadhav Plot No.42-44, Green Park Society, Viman Nagar, Pune – 411014	**Vs.**	DCIT, Central Circle 2(1), Pune
		PAN: AANPJ0592P
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Kishor B Phadke
Department by	**:**	Shri Ajay Kumar Keshari – CIT and Shri Arvind Desai, Addl CIT-DR
Date of hearing	**:**	23-01-2025
Date of pronouncement	**:**	21-04-2025

O R D E R

PER R. K. PANDA, VP :

ITA No.1307/PUN/2024 filed by the Revenue and ITA No.2144/PUN/2024 filed by the assessee are cross appeals and are directed against the order dated 08.03.2024 of the Ld. CIT(A), Pune - 12 relating to assessment year 2007-08. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assessee is an individual and has filed his original return of income u/s 139(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') declaring total income of Rs.77,29,880/-. Subsequently, search and seizure action u/s 132 of the Act was conducted in the Sava Group of cases on 31.10.2010 during which the assessee was also covered. In response to the notice u/s 153A served on the assessee for assessment years 2007-08 to 2012-13, the assessee submitted that the original returns of income filed u/s 139(1) for assessment years 2007-08 to 2012-13 may be treated as returns in response to the notice issued u/s 153A of the Act.

3. During the course of assessment proceedings the assessee took the decision to approach the Income Tax Settlement Commission and filed an application u/s 245C(1) of the Act on 20.03.2014 for settlement of his tax liability for assessment years 2007-08 to 2012-13. He disclosed the additional income of Rs.3,65,24,551/- before the Settlement Commission for various years, the details of which are as under:

A.Y.	*Income offered in return in response to notice u/s 153A*	*Additional income offered in SOF*
2007-08	*1,18,22,840/-*	*10,21,000/-*
2008-09	*55,28,100/-*	*10,25,200/-*
2009-10	*3,84,01,950/-*	*10,25,200/-*
2010-11	*77,29,880/-*	*53,88,920/-*
2011-12	*6,81,83,870/-*	*2,07,56,798/-*
2012-13	*3,57,72,592/-*	*73,07,433/-*

4. The application was admitted vide order dated 245D(1) on 01.04.2014.. The application was further allowed to be proceeded with vide order u/s 245D(2C) dated 26.05.2014. During the settlement proceedings, the Settlement Commission had made addition of Rs.39,20,00,000/-, in excess of additional income offered by the assessee on account of salary received from foreign entity. The application was finally disposed of by passing an order u/s 245D(4) on 27.08.2015.

5. Subsequent to the order passed u/s 245D(4) dated 27.08.2015, the assessee filed a miscellaneous petition dated 28.09.2015 requesting for grant of 4 equal quarterly installments for payment of tax and interest pursuant to the order u/s 245D(4). Although, the assessee had sought installments facility of 4 quarterly installments for payment of tax and interest during the course of hearing u/s 245D(4) on 04.08.2014, however, the issue of grant of installment was inadvertently missed out in the final order passed u/s 245D(4), dated 27.08.2015. Finally, the prayer of the assessee was accepted and the order was rectified under the provisions of section 245D(6B) r.w.s. 245D(2D) dated 20.10.2015. The assessee filed a writ petition No.868 of 2016 against the order passed u/s 245D(6B) r.w.s. 245D(2D) dated 20.10.2015 which was pending at the time of passing of the order by Ld. CIT(A).

6. As Shri Vinod Jadhav had paid only the first installment granted vide order u/s 245D(6B) dated 20.10.2015 and thereafter defaulted in respect of subsequent

installments, therefore, the Pr. CIT(C), Pune vide letter dated 10.11.2016 filed on 18.11.2016 requested the Commission for withdrawal of immunities from penalty and prosecution granted to the applicant for non-payment of tax and interest as stipulated in the order u/s 245D(4), dt. 27.08.2015. The Settlement Commission vide its order dated 03.05.2017 passed u/s 245H(1A) withdrew the immunities granted from penalty and prosecution as per order u/s 245D(4), dt. 27.08.2015.

7. Subsequently, the Assessing Officer initiated penalty proceedings and issued notice u/s 271(1)(c) asking the assessee as to why penalty should not be levied for A.Y. 2010-11. The assessee in his submission stated that the tax due on all items of statement of facts were duly paid and only the addition made by the Settlement Commission in its order u/s 245D(4) was not paid by the assessee. It was submitted that the assessee did not have money to pay and that his Writ Petition against this addition was admitted by the Hon'ble High Court. It was accordingly pleaded that no penalty. It was further submitted that as the prosecution notice was withdrawn in the case of the assessee, the penalty should not be levied till the decision of the Hon'ble Bombay High Court.

8. However, the Assessing Officer rejected this plea of the assessee on the ground that the assessee's plea for granting of stay in penalty proceedings was cancelled by the Hon'ble Bombay High Court, therefore, the situation does not warrant the withdrawal of penalty proceedings. Subsequently, the application for

stay of penalty proceedings was rejected by the Hon'ble Bombay High Court. The Assessing Officer, therefore, proceeded to decide the issue of penalty leviable u/s 271(1)(c) of the Act. He noted that for the year under consideration the assessee had filed return u/s 153A at Rs.77,29,880/- and the additional income offered in the statement of facts is Rs.53,88,920/-, out of which Rs.50 lakh was offered as buffer income and Rs.3,88,920/- was offered as notional rental income on house property. The addition of Rs.39,20,00,000/- on income from salary was made by the Settlement Commission in its order u/s 245D(4) dated 27.08.2015.

9. So far as the Income from House property is concerned, the Assessing Officer noted that the assessee in its original return had shown income from house property of Rs.1,46,524/- (from Lunkad colonnade, Pune - Rs.121324/- and for Talegaon flat Rs.25,200/-) and in the statements of facts submitted before the Settlement Commission, the assessee has disclosed an amount of Rs.31,920/- from Talegaon flat and Rs.42,000/- from Lunkad Collonade Viman Nagar property as his additional income from house property. The assessee has also offered additional income of Rs.3,15,000/- being income from House Property situated at Lalwani Plaza, office No.04 & 05 in the statement of facts before the Settlement Commission. Thus, this income from Lalwani Plaza office No.04 & 05 was not shown in any return of income filed by the assessee and only declared it before the Settlement Commission. In the submission dated 28.09.2018 the assessee claimed that it was an inadvertent mistake which happened because the house property was

vacant in the respective years. The argument made by the assessee was rejected by the Assessing Officer on the ground that ignorance of law cannot be taken as a plea in any penal proceedings. According to the Assessing Officer, the assessee seems to have made a very convenient reply. He noted that the assessee did not declare/offer this income in his original returns of income nor in return of income filed in response to notice 153A. It was only before the Settlement Commission that the assessee declared and offered this income from House property as his income in statement of facts. According to the Assessing Officer, had the search not taken place the assessee would never have declared / disclosed this inadvertent mistake. The assessee had two opportunities to disclose this income voluntarily but assessee never revealed it in any of the return of income filed by the assessee. This according to the Assessing Officer leaves no doubt that the assessee had every intention to conceal this income and hoped for escapement of taxation on the same. He therefore, levied penalty on the additional house rent income declared before the Settlement Commission.

10. So far as the buffer income offered in statements of facts is concerned, the assessee claimed that it has been done on ad-hoc basis and hence is not an item of income. It was submitted that the assessee declared this income to cover any omission or error. However, this plea of the assessee was not accepted by the Assessing Officer. According to the Assessing Officer, even though the assessee has made this buffer income voluntarily, it is nonetheless not offered for taxation

in the return filed in the response to notice u/s 153A of the Act. According to the Assessing Officer, the assessee has disclosed the buffer income because he was sure that the income tax department during the search action had collected many evidences which would eventually result in enhanced income over and above that of the income offered in response to notice issued u/s 153A. The assessee had not hoped to cover the mistakes but to cover many possible additions to his total income. He, therefore, levied penalty on this additional income also.

11. The Assessing Officer further noted that the Settlement Commission, in its order passed u/s 245D(4), dated 27.08.2015, has unequivocally decided that assessee's global income will be taxed in India but before going to Settlement Commission the assessee, while submitting his original return of income, has revealed otherwise. According to the Assessing Officer in view of the settled law by Apex Court in Reliance case, it is the return of income filed by the assessee which is the material thing that is to be considered. In the instant case the assessee, in his original return and in the return filed in response to notice u/s 153A, did not offer his global income and has not paid the due taxes. In para 7.3.8 of the order u/s 245D(4) the Settlement Commission has unequivocally held that the assessee is a resident as per section 6[1](c).

12. According to the Assessing Officer, had the search not taken place then his earning from the foreign country would not have been detected. The assessee

according to the Assessing Officer cannot take a plea that taxation of foreign income is debatable one in view of the decision of Hon'ble Uttaranchal High Court in CIT vs Reading and Baten Exploration reported in 278 ITR 47. Rejecting the various explanations given by the assessee, the Assessing Officer levied penalty of Rs.12,27,93,180/- u/s 271(1)(c) of the Act by recording as under:

> *"17. In the order of the honourable Settlement commission u/245 after going through the whole gamut of case proceedings directed Pr CIT and AO to initiate penalty and prosecution as per the statutory provisions. It is thus clear that when the immunity is withdrawn then the normal penal provision would apply. Hence the AO had initiated penal proceeding on specific limb i.e. concealment of income via notice dated 31/03/2018. It is to be noted here that until the second show cause was sent the assessee didn't even bother to reply and only when the second show cause was sent the assessee took a plea that he is going to approach the Hounarable High Court to seek stay on penalty proceeding. The Hounarable High Court, while deciding on the civil application of the assessee declined to stay the penalty proceeding and hence as of now there is no bar on levying the penalty and hence penalty has to be levied on the fact and circumstances of the case.*
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> *18 AO has initiated the penalty of concealment of income and furnishing of inaccurate particulars specifically AR of the assessee has submitted the reply saying the penalty is not automatic. In the instant case the honourable Settlement commission has not granted any relief in the order u/s 245H(1A) rather the settlement Commission has followed the statutory provision has revoked the immunity of the assessee from prosecution and penalty. Thus the assessee can't be given the benefit of the doubt as there is a settled legal proposition and can't be said that he was ignorant of the provision of law Hence it's a clear case to levy penalty for concealing the particulars of income.*
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> *19. AR of the assessee also made claim that if the assessee is in writ before the high court AO cant levy penalty but it is to be noted that the Hon'ble Settlement Commission has revoked the immunity of the assessee from prosecution and penalty very well knowing that the assessee has gone into writ and also Hon'ble High Court has not allowed the assessee's prayer no (c) & (e) (i.e. pending the final hearing and disposal of the petition, direct that the respondents be restrained (whether acting themselves or through their servants / agents / employees or officers) from initiating and continuing any coercive, recovery or penalty proceedings in furtherance of the impugned order inter alia in relation to penalty notices or in respect of the additions resulting on account of the impugned order of the civil application.*
>
> *20 In view of the above, discussion, the undersigned is satisfied that the assessee has concealed the particulars of income of Rs.39,20,00,000/- with respect to*

salary as income received from foreign entity and income from house property of Rs.3,15,000/- and the buffer income of Rs.5000000/-. Also the assessee has furnished inaccurate particulars of income with respect to income from house property of amount of Rs.31,920/- and of Rs.42,000/- hence is liable for penalty u/s 271(1)(c) of the Act. Therefore, I consider this to be a fit case for imposing penalty under Explanation 1 of section 271(1)(c) of the Act for concealing this income and furnished inaccurate particulars of income. This penalty may range from 100% to 300% of the tax sought to be evaded. To be fair to the assessee, the undersigned hereby levies 100% of the tax sought to be evaded which comes at Rs. 12,27,93,180/- as penalty u/s 271(1)(c) of the Income tax Act, 1961 ….”

13. Before the Ld. CIT(A) it was argued that the penalty levied by the Assessing Officer is barred by limitation. It was submitted that the Assessing Officer did not have any jurisdiction since the assessee’s application was admitted by the Settlement Commission and it was only the Settlement Commission which could have initiated and levied penalty u/s 271(1)(c) of the Act and not by the Assessing Officer.

14. Based on the arguments advanced by the assessee, the Ld. CIT(A) deleted the penalty levied by the Assessing Officer u/s 271(1)(c) of the Act being barred by limitation by observing as under:

*“**Finding:***

5.2 I have considered the facts of the case and the submissions made by the appellant. During the appellate proceedings, the appellant has submitted copies of orders u/s 245D(2C), 245D(4), 245D(6B) & 245H(1A) passed by Hon'ble Settlement Commission, copy of show cause notice for prosecution issued by the PCIT(C), copy of prosecution proceedings SCN withdrawn by the PCIT(C) and copies of penalty notice initiated by the AO, etc. The main contention of the appellant is that the impugned penalty order u/s 271(1)(c) of the Act was passed on 28.09.2018 ie. after 31.03.2018. Hence, the said order is time barred and as such, bad in law. Hence, penalty levied u/s 271(1)(c) of the IT Act, 1961 should be deleted.

5.3 Further, it is seen that the Hon'ble Settlement Commission vide their order dated 03.05.2017 passed u/s 245H(1A) withdrew the immunities from penalty and prosecution granted as per order u/s 245D(4) dated 27.08.2015. Now the question arises that in which date the penalty proceedings u/s 271(1)(c) of the IT Act, 1961 to be initiated i.e. 03.05.2017 (order passed by the Hon'ble settlement commission) or 31.03.2018 (notice initiated by the AO) and in which date, the said penalty proceedings to be completed i.e. 31.03.2018 (end of the financial year in which order u/s 245H(1A) passed by the Hon'ble settlement commission) or 30.09.2018 (within 06 months from the end of the month in which action for imposition of penalty is initiated).

5.4 Appellant has raised various grounds on merits as well as on technical aspects in this appeal. Apart from various contentions Appellant has also raised issue of time limit for levy of penalty u/s 271(1)(c) of the Act. In this regard, following key events chart is extracted from Appellant's submissions.

Date	***Event***
30-08-2008	*Filing of regular return of income by the appellant.*
27-08-2015	*Hon'ble Settlement commission passed order u/s 245D(4) and made addition of Rs. 39.2 CR in excess of additional income for AY 2010-11 offered by the appellant and held that appellant as resident of India for AY 2010-11.*
10-11-2016	*Pr. CIT(C), Pune pressed for withdrawal of immunities from penalty and prosecution granted to the appellant, for non-payment of tax and interest*
03-05-2017 *14-3-2018* *31-3-2018* *10-04-2018* *28-9-2018*	*Hon'ble Settlement Commission vide its order u/s 245H(1A) withdraw the immunities from penalty and prosecution granted earlier.* *Show cause notice for prosecution* *Penalty notices issued* *Prosecution proceedings SCN withdrawn* *Concealment penalty levied*

5.5 Appellant has contended that the penalty order is barred by limitation of time. Hence, the provisions of section 275 are discussed hereunder for ready reference.

Analysis of Section 275- *From perusal of the said section, it is seen that there is no appeal against the order of Honorable Settlement Commission passed u/s*

245D(4). As such, sub-clause (a) and (b) are irrelevant for the present case. It is only sub-clause (c) of the said section which is relevant. The said sub-clause is deliberated further hereunder. For the further analysis of issue of limitation period, analysis of end dates emerging from the said sub-clause (c) of section 275(1) is required to be carried out. Now, for reaching the end date of limitation period, it is expedient to determine the correct date for initiation of penalty proceedings.

5.6 If the date of 27.08.2015 is taken as the date of initiation of Penalty proceedings-

Appellant's submission is required to be considered in light of the facts of the case as well as considering the provisions of law. Appellant, in the above table, has simply reproduced specific provisions of section 275(1) of ITA, 1961. However, in this regard, one has to consider the Explanation given at the end of section 275 of ITA, 1961 which is reproduced below.

> *Explanation. In computing the period of limitation for the purposes of this section,-*
>
> *(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;*
>
> ***(ii) any period during which the immunity granted under section 245H remained in force, and***
>
> *(iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.*

5.7 From the above, and in particular from sub-clause (ii), it transpires that, period during which immunity is granted u/s 245H is required to be excluded. As such, for computing the actual limitation period u/s 271(1)(c), period for which immunity was granted is required to be worked out. Same is worked out as under.

Date of granting immunity	*245D(4) order dated 27.08.2015*
Date of immunity withdrawal	*245H(1A) order dated 03.05.2017*
Immunity period	*20 Months and 7 days i.e.* *August-15 balance days 4 days* *+ Sep-15 to Apr-17 =20 Month* *+ May-17 balance days = 3 days* *---* *20 Months and 7 days* *==========*

5.8 The above mentioned period of 20 Months and 7 days is required to be added to the two time periods specified in section 275(1)(c). The emerging limitation dates are as under.

> ***1st limitation date-****For deducing the 1st limitation date, the date on which penalty proceedings were initiated needs to be determined. The said date has to be considered as the date of 245D(4) order i..e.* ***27.08.2015*** *(and not any earlier date of Settlement Commission proceedings). Typically, Penalty proceedings are initiated always during the assessment proceedings, wherein, point of "satisfaction" of concealment is reached. Now, perusal of the order u/s 245D(4) reveals that till the conclusion of hearings / proceedings, issues of QUANTUM of income were discussed and deliberated. Penalty proceedings, and related aspects to levy of Penalty were discussed only from para 10.2 onwards and, the Honorable Settlement Commission granted immunity from penalty and prosecution vide the said para 10.2 of the order u/s 245D(4). As per the first limb of section 275(1)(c), no penalty can be levied beyond end of the financial year in which the said proceedings are initiated. As such, the 1st limitation date (before considering excluded period) is determined as* ***31.03.2016****, i.e. end of the relevant FY. Now, in the said date, the excluded period is required to be added. When the excluded period of 20 months and 7 days worked out as above is added to the above date of 31.03.2016, the 1st limitation date will be* ***07.12.2017****. In the present case, the concealment penalty is levied on* ***26.09.2018****, hence, the impugned penalty order happens to be beyond the date of 1st date of limitation.*
>
> ***2nd limitation date*** *- For deducing 2nd limitation date, one needs to work out the end date of 6 months period from the end of month in which the penalty proceedings are initiated. As per the events chart above, such date is inferred as* ***29.02.2016*** *[i.e. 6 months from 31st August 2015 i.e, the end date of the month in which 245D(4) order was passed.] Now, in the said date, the excluded period is required to be added. When the excluded period of 20 Months and 7 days worked out as above is added to the above date of* ***29.02.2016****, the 2nd limitation date happens to be* ***07.11.2017****. In the present case, the concealment penalty is levied on 26.09.2018. Hence, the said penalty order happens to be beyond the date of 2nd date of limitation too.*

If date of 245H(1A) order i.e. 03.05.2017 is taken as date of initiation of Penalty proceedings- *If the date of 245H(1A) order ie. 03.05.2017 is considered as the date on which concealment penalty proceedings are initiated, then, the two dates of limitation will be determined as under.*

> ***1st limitation date*** *- For deducing the 1st limitation date, the date on which penalty proceedings were initiated needs to be determined. Now, this date is considered as 03.05.2017. As such, the 1st limitation period ends on 31.03.2018. In the present case, the concealment penalty is levied on*

26.09.2018 *hence, the said penalty order happens to be beyond the date of 1st date of limitation.*

2nd limitation date *- For deducing the 2nd limitation date, one needs to work out the end date of 6 months period from the end of month in which, the penalty proceedings are initiated. Now, this 2nd limitation date transpires to be* ***30.11.2017*** *[i.e. 6 months from 31st May 2017 i.e. the end date of the month in which 245H(1A) order was passed.] In the present case, the concealment penalty is levied on* ***26.09.2018****, hence, the said penalty order happens to be beyond the date of 2nd date of limitation.*

5.9 Time limit u/s 245D(7) *In the section 245D(7), a different time limit is provided for such Settlement Orders which are VOID. As per section 245D(6), a void order is that, wherein, Settlement has been obtained by misrepresentation of facts. Perusal of the 245D(4) order and 245H(1A) order does not reveal any such case, and as such, time limits u/s 245D(7) is not relevant in the instant case.*

5.10 Time limit u/s 245HA *- In section 245HA, various situations of abatement of Settlement proceedings are envisaged such as, case where, Settlement Application gets rejected or where, Settlement order is not passed within 18 months period and so on. Perusal of the 245D(4) and 245H(1A) order does not reveal such abatement situations. As such, related time limit u/s 245HA is not relevant in the instant case.*

5.11 Notice for initiation of Concealment Penalty *- In the present case, the penalty notices have been issued on 31.03.2018 and date of hearing stipulated in the said notice was 09.04.2018. Thus, it is clear that the notice of hearing itself was beyond the period of two limitation dates.*

5.12 Considering the above analysis, it transpires that, the concealment penalty order dated ***26.09.2018*** *suffers from the defect of limitation period.*

5.13 Appellant has raised various contentions including the specific submission that, once some issue is admitted for adjudication by the Honorable High Court, such issue is no more eligible for levy of concealment penalty, etc. I find merit in the said submission. However, since, the ***Ground No.3*** *stands allowed on technical issue of period of limitation, other grounds are not adjudicated upon.*

5.14 In view of the above, the penalty order u/s 271(1)(c) of the IT Act, 1961 passed on 28.09.2018 by the AO is held to be barred by limitation of time and hence, bad in law. Thus, the AO is directed to ***delete*** *the impugned penalty. This ground raised by the appellant is hereby,* ***Allowed.****"*

15. Aggrieved with such order of Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

01. On the facts and the circumstances and in law, the Ld. CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the Income-tax Act, 1961 only on technical grounds and not on the merits of the case, without appreciating the fact that the penalty proceedings were completed within the stipulated time period as per the provisions of section 275 of the Act.

02. On the facts and the circumstances and in law, the Ld. CIT(A) has erred in holding that the initiation of penalty is time barred without appreciating the fact that no time limit is provided in the Act for initiation of penalty proceedings after withdrawal of immunity from levying penalty by the Hon'ble Income Tax Settlement Commission. Also, the Ld CIT(A) himself determined two different dates for initiation of penalty which proves that there is no specific time limit for initiation of penalty.

03. The Ld. CIT(A) has erred in holding that the initiation of penalty is time barred without appreciating the fact that the AO had initiated the penalty only after verification of the facts of the case and provisions of the Income Tax Act, 1961 and after getting satisfaction that there is concealment of income.

16. The assessee has also raised the following grounds in the appeal filed by him:

1. The learned I-T Authorities erred in law and on facts in levying penalty u/s 271(1)(c) of the ITA, 1961 amounting to Rs.12,27,93,180/- (being 100% of the alleged tax evaded) for concealment of income.

2. The learned I-T Authorities erred in law and on facts in assuming jurisdiction for levying penalty u/s 271(1)(c) of the ITA, 1961 without appreciating that learned AO did not have any jurisdiction since the appellant's application was admitted by the Hon'ble Settlement Commission & it was for the Hon'ble Settlement Commission alone to deal with all the issues pertaining to tax, penalty or interest relating to the assessment years in question as per the provision of Sec. 245F(2) of ITA, 1961. It is further submitted that the exclusive jurisdiction u/s 245F(2) can't bestowed upon the regular AO in absence of suitable provision to that effect.

3. The learned I-T Authorities erred in law and on facts in levying penalty w.r.t. each and every issue of additional income offered by the appellant before the Hon'ble Settlement Commission The learned AO took the "liberty" granted by the Hon'ble Settlement Commission as if a "direction" to levy penalty.

4. The learned I-T Authorities erred in law and on facts in levying penalty for "concealment of particulars of income" without reaching any "satisfaction

regarding the alleged concealment of income, since, quantum proceedings were concluded before the Honorable Settlement Commission and not before the learned AO.

5. *The learned I-T Authorities erred in law and on facts in levying concealment penalty on some of the items of income under "concealment of particulars of income (i.e. Limb-1)" and on other items of income under "furnishing inaccurate particulars of income (i.e. Limb-2)", without any cogent reasons for such distinctions.*

6. *Learned I-T Authorities erred in law and on facts in treating issue of "residential status as a part and parcel of issue of "concealment of income". Appellant contends that, scope of "concealment of income ought to be construed/interpreted from the specific clear words, which do not include issue of residential status at all.*

7. *The learned I-T Authorities ought to have appreciated fact that, Hon'ble Settlement Commission held appellant as Non-Resident in order passed u/s 245D(2C) order and later changed it's own view on legal interpretation, holding appellant as Resident u/s 245D(4) of ITA, 1961. Appellant contends that such debatable issues are totally different than the scope of 'concealed income.*

8. *The learned I-T Authorities erred in law and on facts in levying concealment penalty on the salary income of Rs.39,20,00,000 received from foreign AE parties without appreciating that, appellant's WRIT petition on this aspect has been admitted by the Honourable Bombay High Court. Appellant contends that any substantial question of law, admitted for adjudication by Honourable High Court ought not to subjected for levy of concealment penalty.*

9. *The learned IT Authorities erred in law and on facts in levying penalty on notional income of house property amounting to Rs.3,88,920, without appreciating that the said "income" was not part of any incriminating material & as such, the same could not have been assessed at the 153A stage by the learned AO. It is further contended, learned AO devised concealment penalty w.r.t. such income which didn't emanate from any search proceeding.*

10. *The learned IT Authorities erred in law and on facts in levying penalty on ad-hoc buffer income amounting to Rs.50,00,000 shown in Settlement Application without appreciating that the said income was included by the appellant to avoid any unintended lapses/errors/ omissions, etc. The learned AO erred on facts in levying penalty w.r.t. the said buffer income on the surmises/assumption/presumption that, the buffer income as in fact concealed income, despite the factum of absence of any relevant incriminating material.*

11. Appellant craves leave to add/alter/delete/ modify, all/ any of the above grounds of appeal.

17. The Ld. DR at the outset challenged the order of the Ld. CIT(A) in cancelling the penalty on account of limitation. He submitted that the Ld. CIT(A) calculated the time for passing the penalty order u/s 245D(4) dated 27.08.2015 which was not correct and not acceptable. Referring to the provisions of section 275 of the Act, he submitted that the provisions of section 275(1)(c) are applicable to the facts of the case which read as under:

*"**Section-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 subject-matter of an appeal to the Joint Commissioner (Appeals) or 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 Joint Commissioner (Appeals) or 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 Joint Commissioner (Appeals) or to the Commissioner (Appeals) under section 246 or section 246A, and the Joint Commissioner (Appeals) or 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 Joint Commissioner (Appeals) or 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 subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;

> *(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."*

18. He submitted that since the order was passed by the Settlement Commission under Section 245D(4) and Section 245H(1A), which are categorized as "any other case, therefore, the order passed u/s 271(1)(c) should be completed within six months from the end of the month in which the penalty action was initiated. He submitted that in the instant case, the Assessing Officer initiated penalty proceedings on 31st March 2018, and the penalty order was passed on 29th September 2018. Since the order passed by the Assessing Officer is within the allowable period i.e. 30th September 2018, therefore, such order being in accordance with law is correct and the Ld. CIT(A) is not justified in deleting the penalty merely on the technical ground that the same is barred by limitation.

19. The Ld. DR submitted that in the assessment order for A.Y. 2010-2011, the additional income as per the return filed under Section 153A is Rs.53,88,880/-. Furthermore, an addition of Rs.39,20,00,000/- was made by the Settlement Commission on account of salary income in its order passed u/s 245D(4) dated 27th August 2015, which was not offered in the return of income filed under Section 153A. He submitted that the type of income disclosed before the Settlement Commission could have been disclosed by the assessee either in the original return of income or in the return filed in response to the notice under

Section 153A. However, the assessee has not done so. Further, the assessee was a resident in A.Y. 2010-11, in accordance with Section 6(1) of the Income-tax Act. The assessee was employed by an Indian company as well as a UAE company of the SAVA Group. These facts were established in the order passed by the Settlement Commission u/s 245D(4) dated 27th August 2015. Further, the Settlement Commission vide order dated 03.05.2017 in paras 4 and 4.1 has held that Pr CIT and the AO were at liberty to initiate penalty proceedings as deemed fit and proper, in accordance with statutory provisions. Therefore, there is no unjustification in issuing a notice under Section 271(1)(c) as the immunity from penalty under Section 271(1)(c) was withdrawn and this direction was incorporated into the order. Since the assessee in his original return and the return filed in response to the notice under Section 153A did not offer his global income, therefore, the Assessing Officer was fully justified in levying the penalty u/s 271(1)(c) of the Act.

20. So far as the argument regarding debatable issue is concerned, he submitted that the issue is not at all debatable in view of the decision of the Settlement Commission holding the assessee to be a resident and consequently concealment of income of Rs.39,20,00,000/- is liable to be taxed in India as per the provisions of 6(1)(c) r.w.s. 5 of the Act, which governs the taxability of global income for a resident. This interpretation aligns with the residency status criteria under the Act and leads to the conclusion that the salary earned abroad is subject to tax in India.

21. So far as the various decisions relied on by the Ld. Counsel for the assessee to the proposition that when the Hon'ble High Court admits the appeal on substantial question of law, no penalty proceedings should be initiated is concerned, he referred to the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Prakash S. Vyas (2015) 58 taxmann.com 334 (Guj) and submitted that the Hon'ble High Court in the said decision has held that mere admission of an appeal by the Hon'ble High Court cannot without there being anything further, be an indication that the issue is debatable one so as to delete the penalty u/s 271(1)(c) of the Act even if there are independent grounds and reasons to believe that the assessee's case would fall under the mischief envisaged in the said clause (c) of sub-section (1) of section 271 of the Act. He accordingly submitted that the Assessing Officer was fully justified in levying the penalty u/s 271(1)(c) of the Act and the Ld. CIT(A) was not justified in deleting the same.

22. The Ld. Counsel for the assessee on the other hand while supporting the order of Ld. CIT(A) in quashing the penalty being barred by limitation submitted that the Assessing Officer has levied penalty u/s 271(1)(c) of the Act on the amount of Rs.39,73,88,920/-, the details of which are as under:

(i)	Income on account of house property	Rs.3,88,920/-
(ii)	Buffer income declared	Rs.50,00,000/-
(iii)	Income from salary	Rs.39,20,00,000/-

23. So far as the income from house property amounting to Rs.3,88,920/- is concerned, the Ld. Counsel for the assessee submitted that the assessee in his original return has declared the income from house property of Rs.1,46,524/- (from Lunkad colonnade, Pune - Rs.1,21,324/- and for Talegaon flat Rs.25,200/-) and in the statements of facts submitted before the Settlement Commission, the assessee disclosed an amount of Rs.31,920/- from Talegaon flat and Rs.42,000/- from Lunkad Collonade Viman Nagar property as his additional income from house property. He submitted that the amount of Rs.3,15,000/- from Lalwani Plaza office No.04 and 05 was not shown in any return of the income filed by the assessee and only declared it before the Settlement Commission since the house property was vacant in the respective years.

24. Referring to the penalty order passed by the Assessing Officer, he submitted that the Assessing Officer levied penalty on the ground that ignorance of law cannot be taken as a plea in any penal proceedings. He submitted that since the house property was vacant during the year and only the income was declared before the Settlement Commission for which the Assessing Officer initiated penalty proceedings, the same is not justified. Further, an amount of Rs.31,920/- from Talegaon flat and Rs.42,000/- from Lunkad Collonade Viman Nagar property was declared as his additional income on account of arithmetical inaccuracies which does not call for initiation of penalty proceedings.

25. So far as the amount of Rs.50 lakhs offered as buffer income is concerned, he submitted that the same was offered only to overcome any probable discrepancies or mismatch and therefore, the same does not call for penalty u/s 271(1)(c) of the Act.

26. So far as the amount of Rs.39,20,00,000/- being income from salary is concerned, he submitted that the Settlement Commission vide order dated 26.05.2014 passed u/s 245D(2C) of the Act at para 6 of the order has held the status of the assessee as non-resident. However, in the order passed on 27.08.2015 the Settlement Commission has treated the assessee as resident Indian. He submitted that the issue is a highly debatable one and the appeal filed by the assessee challenging the order of Settlement Commission holding the assessee to be a resident Indian has been admitted by the Hon'ble High Court. He submitted that treating the issue of residential status as a part and parcel of issue of concealment of income is not in accordance with law.

27. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Nayan Builders and Developers (2014) 368 ITR 722 (Bom), he submitted that the Hon'ble High Court in the said decision has held that where the High Court admits the substantial question of law in respect of which penalty was levied, such penalty has to be deleted.

28. Referring to the decision of Hon’ble Bombay High Court in the case of Pr.CIT vs. Dhariwal Industries Ltd. vide ITA Nos.1133, 1136 and 1129 of 2016, order dated 04.09.2018, he submitted that the Hon’ble High Court in the said decision has upheld the order of the Tribunal holding that when substantial question of law is admitted before the High Court, no penalty can be levied u/s 271(1)(c) of the Act.

29. In his next plank of argument, the Ld. Counsel for the assessee referred to the order of the Ld. CIT(A) and submitted that the penalty levied by the Assessing Officer is barred by limitation and the Ld. CIT(A) has rightly cancelled the penalty on account of being barred by limitation. Referring to various other decisions including the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products (P.) Ltd. (2010) 322 ITR 158 (SC), he submitted that both legally and factually, the penalty so levied by the Assessing Officer has to be deleted and the grounds raised by the assessee be allowed and the grounds raised by the Revenue be dismissed.

30. We have heard the rival arguments made by both the sides, perused the order of the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case levied the penalty u/s 271(1)(c) of the Act on account of the following three additions:

(i)	Income on account of house property	Rs.3,88,920/-
(ii)	Buffer income declared	Rs.50,00,000/-
(iii)	Income from salary	Rs.39,20,00,000/-

31. So far as the addition on account of rental income is concerned, we find the major portion of the same is relating to the notional income from house property which was lying vacant. In our opinion, although the addition can be made on account of notional income from the house property which is lying vacant, however penalty u/s 271(1)(c) of the Act is not warranted. The income tax law is so complex and complicated that it is possible that some omission or error may occur on account of interpretation of the statute in a bonafide manner. Since there is no evidence that the assessee has received any rental income from the house property which was vacant and the addition has been made on account of such notional rent, therefore, penalty on the amount of Rs.3,15,000/-, in our opinion, is not justified. We therefore hold that no penalty is leviable on the addition on account of notional house rent.

32. So far as the levy of penalty on account of income from house property in respect of Talegaon flat of Rs.31,920/- and Rs.42,000/- from Lunkad Collonade Viman Nagar property is concerned, it is the submission of the Ld. Counsel for the assessee that due to some arithmetical error, there was shortfall in disclosing that rental income but rental income from the above two properties was disclosed. We

find some force in the above argument of the Ld. Counsel for the assessee that the same was only an arithmetical inaccuracy and not a deliberate attempt to evade tax for which penalty should not be levied. We accordingly hold that no penalty is leviable on account of this difference in rental income.

33. So far as the levy of penalty on the amount of Rs.50 lakhs which was offered as buffer income is concerned, it is the submission of the Ld. Counsel for the assessee that the assessee with abundant precaution has disclosed the amount of Rs.50 lakhs to take care of omission, if any. We find there is absolutely no finding of any income on this account which calls for levy of penalty as the assessee has voluntarily disclosed this additional income of Rs.50 lakhs. It is the case of the Assessing Officer that since the assessee has not offered this buffer income for taxation in the return filed in response to notice u/s 153A, therefore, penalty is leviable. We do not accept this proposition of the Assessing Officer. This amount, in our opinion, is an income voluntarily disclosed by the assessee to overcome omission, if any. However, no such omission or error was found by the Assessing Officer. Since assessee has not paid tax on the amount disclosed before the Settlement Commission, the immunity was withdrawn and the penalty was levied. This being the case, we are of the considered opinion that the penalty on this amount of Rs.50 lakhs disclosed by the assessee as buffer income does not call for levy of penalty u/s 271(1)(c) of the Act.

34. So far as the penalty on the major issue is concerned i.e. levy of penalty on the amount of Rs.39,20,00,000/- received by the assessee as salary which was not added by the assessee in its return of income being a non-resident, we find the Settlement Commission vide order dated 26.05.2014 passed u/s 245D(2C) at para 6 of the order has held that the assessee is a non-resident. The relevant observations of the Settlement Commission read as under:

> *"6. We have carefully considered the submissions and arguments made before us by the CIT (DR) as well as the A.R. We are of the considered view that in the light of the aforesaid clarifications made by the A.R. the applicant has satisfied the fundamental requirements laid down u/s.245C, as there was pendency of assessment proceedings, the additional amount of income-tax payable on additional income disclosed in the application exceeds Rs.50 lacs, due taxes have been paid and intimation given to the A.O. u/s.245C(4) As regards the status of the applicant, we are of the considered view that it is the number of days of physical presence of the applicant in India which would be the determining factor to decide whether he was a resident or a non-resident. The purpose of visit of the applicant out of India would not be material while determining such status in view of provisions of section 6 of I.T. Act. Undisputedly, the applicant during previous year relevant to A.Yr.2010-11 was employed with foreign entities and was in India for a period less than 182 days. Thus his status would be that of a non-resident. We are, therefore, of the considered view that not only true and full disclosure of income has been made, but the manner of earning of income has also been clearly specified by the applicant in the applications filed before us."*

35. However, we find the Settlement Commission vide order dated 27.08.2015 passed u/s 245D(4) has held the assessee to be a resident by observing as under:

> *"7.3.8 In the light of discussion above, we hold that the status of the applicant during A.Y. 2010-11 is that of a 'resident' in view of provisions contained in section 6(1)(c), with explanations (a) and (b), both being inapplicable on the facts of the case. In view of this finding, we are not dealing with the alternate contentions raised by CIT(DR) on applicability of provisions of section 9(i)(ii) and article 4 of DTAA between India and UAE. Accordingly, salary of Rs. 39.2 crores earned by the applicant in UAE during A.Y. 2010-11 is taxable as per section 6(1)(c) r.w.s. 5 of the Act."*

36. From the above we find that two different combinations of the Settlement Commission which consists of very very senior officers of the department are not in agreement with each other regarding the status of the assessee. Under these circumstances, alleging the assessee that the assessee has concealed the particulars of his income of Rs.39,20,00,000/- with respect to salary income by treating himself as non-resident, in our opinion, is not justified.

37. We further find the Settlement Commission vide order dated 27.08.2015 passed u/s 245D(4), copy of which is placed at pages 1 to 35 of the paper book, has observed at para 10.2 of the order that there has been no attempt to conceal any material facts. The relevant observations of the Settlement Commission read as under:

> *"10.2 We are satisfied that there has been no attempt to conceal any material facts. The only addition to income disclosed in settlement application is on account of taxing salary received from foreign entity, holding the applicant to be a resident in view of section 6(1)(c) of the Act and after rejection of legal arguments of the applicant regarding non-taxability of the same. The applicant has co-operated during proceedings before us. As such, the provisions of Section 245H are applicable and the applicant is entitled for grant of immunity. We, therefore, grant immunity from prosecution and penalty under the applicable sections of the Income tax Act."*

38. Although the Settlement Commission in the said order has held the assessee to be a resident Indian, however, there is a finding of fact by the Settlement Commission that the assessee has not concealed any material facts from the Settlement Commission. This shows the bonafideness of the assessee in disclosing the material facts before the Settlement Commission. It is no doubt an admitted

fact that the immunity was withdrawn on account of non-payment of due taxes by the assessee on the basis of the addition made by the Settlement Commission treating the assessee as resident. However, we find the assessee subsequently challenged the order of the Settlement Commission treating the assessee as resident and the Hon'ble High Court vide order dated 31.08.2016 has admitted the substantial question of law.

39. Under these circumstances, we have to see as to whether the penalty is leviable when substantial question of law is admitted by the Hon'ble High Court. We find in an identical issue had come up before the Hon'ble Bombay High Court in the case of CIT vs. Nayan Builders and Developers (supra). We find the Hon'ble High Court held that when substantial question of law is admitted by the High Court, penalty has to be deleted. We find in that case the Tribunal deleted the penalty on the ground that when the substantial question of law is admitted by the Hon'ble High Court, penalty is not leviable. The relevant observations of the Tribunal read as under:

> *"3. It is, therefore, abundantly clear that the additions in respect of which penalty was confirmed have been accepted by the Hon'ble Bombay High Court leading to substantial question of law. When the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable. In such circumstances penalty cannot be levied u/s 271(1)(c) as has been held in several cases including Rupam Mercantile Vs. DCIT [(2004) 91 ITD 237 (Ahd) (TM)] and Smt.Ramila Ratilal Shah Vs. ACIT [(1998) 60 TTJ (Ahd) 171]. The admission of substantial question of law by the Hon'ble High Court lends credence to the bona fides of the assessee in claiming deduction. Once it turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty. Since the additions, in respect of which penalty has been upheld in the*

present proceedings, have been held by the Hon'ble High Court to be involving a substantial question of law, in our considered opinion, the penalty is not exigible under this section. We, therefore, order for the deletion of penalty."

40. We find when the Revenue challenged the order of the Tribunal, the Hon'ble High Court dismissed the appeal filed by the Revenue by observing as under:

"1. Having heard Mr Ahuja, learned counsel appearing on behalf of the appellant, we find that this appeal cannot be entertained as it does not raise any substantial question of law. The imposition of penalty was found not to be justified and the appeal was allowed. As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on the assessee's appeal in quantum proceedings and the substantial questions of law which have been framed therein. We have also perused that order dated September 27, 2010, admitting Income Tax Appeal No. 2368 of 2009. In our view, there was no case made out for imposition of penalty and the same was rightly set aside. The appeal raises no substantial question of law, it is dismissed. No costs."

41. We find the Hon'ble Bombay High Court in the case of Pr.CIT vs. Dhariwal Industries Ltd. (supra) also upheld the order of the Tribunal deleting the penalty on the ground that substantial question has been admitted by the High Court. The relevant observations of the Hon'ble High Court read as under:

"5. As far as, Income Tax Appeal Nos. 1136 of 2016 (for the A.Y. 2004-05) and Income Tax Appeal No. 1129 of 2016 (for the A.Y. 2005-06) are concerned, only one question of law was re-casted and placed before us, as a substantial question of law and which reads as under:

> *"Whether on the facts and circumstances of the case and in law, the Honourable ITAT was correct in holding that since the appeal in quantum proceedings is admitted by the Honourable High Court, no penalty under Section 271(1)(c) can be levied?"*

6. In all these appeals, we find that the appeals with reference to the quantum proceedings have been admitted by this Honourable Court on a substantial question of law. That has also been recorded by the Tribunal in the impugned order and the same is also not disputed before us. We find that the appeals were admitted as this Court found that there were debatable and arguable questions raised in the quantum proceedings. This being the case, we find that the Tribunal, in the facts and circumstances of the present case, was fully justified in confirming

the order of the CIT (A) in all the three assessment years for deleting the penalty as far point Nos. 1 and 2 (reproduced above) are concerned."

42. We find the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158 (SC) has held that mere making of a claim which is not sustainable in law by itself, will not attract penalty under the section when the assessee has furnished all the particulars of income, which are not found to be inaccurate. It is up to the authorities to accept the claim of the assessee or not, but that cannot call for imposition of penalty. We also find merit in the argument of Ld. Counsel for the assessee that treating the issue of residential status as a part and parcel of issue of concealment of income is not justified. In our opinion, scope of concealment of income ought to be construed / interpreted from the specific clear words which do not include issue of residential status.

43. So far as the decision relied on by the Ld. CIT-DR in the case of CIT vs. Prakash S. Vyas (supra) is concerned, we find the Hon'ble High Court has held that unless there is an indication in the order passed by the Hon'ble High Court, simply because tax appeal is admitted, would not give rise to presumption that the issue is debatable, therefore, the penalty u/s 271(1)(c) of the Act could not be deleted on this ground. Although there is a contrary decision in favour of the Revenue, however, the same is of a non-jurisdictional High Court and much prior to the two decisions of Hon'ble Bombay High Court i.e. the jurisdictional High Court which is binding on us. Therefore, the case law cited by the Revenue cannot

be accepted and the decision of the Hon'ble jurisdictional High Court has to be followed. We, therefore, hold that the penalty levied by the Assessing Officer is not sustainable on account of substantial question of law being admitted on the issue of salary income and the residential status of the assessee.

44. Even otherwise also, we are of the considered opinion that the penalty proceedings initiated by the Assessing Officer are barred by limitation. The provisions of section 275 of the Act which speaks of bar of limitation for imposing the penalty have already been reproduced at para 17 of this order. A perusal of the same shows that clauses (a) and (b) of the said provisions are not applicable to the assessee and only clause (c) of the same are applicable to the present assessee. We find the Settlement Commission vide order dated 27.08.2015 passed u/s 245D(4) had granted immunity to the assessee which was withdrawn by the Settlement Commission on 03.05.2017 vide order passed u/s 245(H)(1A). Therefore, the assessee was granted immunity from penalty and prosecution for a period of 20 months and 7 days i.e. between the period from 27.08.2015 till 03.05.2017. This, in our opinion, has to be added to the two time periods specified in section 275(1)(c). If the first limitation i.e. the expiry of the financial year in which the action for imposition of penalty has been initiated are completed is considered, then in view of the order passed u/s 245D(4) dated 27.08.2015, the limitation period after considering the period of 20 months and 7 days is 07.12.2017.

However, the concealment penalty has been levied on 26.09.2018. Therefore, such penalty order is beyond the first date of limitation.

45. Similarly, if the period of 6 months from the end of the month in which the action for imposition of penalty has been initiated is considered, then such date to be inferred is 29.02.2016 i.e. 6 months from 31.08.2015 i.e. the end date of the month in which 245D(4) order was passed. After adding the immunity period of 20 months and 7 days to 29.02.2016, the second limitation period happens to be 07.11.2017. However, the concealment penalty order has been passed on 26.09.2018. Therefore, the penalty order has been passed beyond the second date of limitation.

46. Even otherwise also, if the date of withdrawal of immunity passed by the Settlement Commission u/s 245H(1A) on 03.05.2017 is considered as the date of initiation of penalty proceedings, then also the first limitation date ends on 31.03.2018 whereas the penalty has been levied on 26.09.2018 and therefore, such penalty order happens to be beyond the date of first date of limitation. So far as the second limitation date is concerned, if we consider the end of 6 months from the end of the month in which the penalty proceedings are initiated, then the second limitation period ends on 30.11.2017 i.e. 6 months from 31.05.2017 (since the order u/s 245H(1A) was passed on 03.05.2017). Since the penalty order has been passed on 26.09.2018, therefore, the said penalty order happens to be beyond

the second date of limitation. Since the penalty order has been passed beyond the stipulated period, therefore, in view of the above discussion and in view of the detailed reasoning given by the Ld. CIT(A) on this issue, we hold that such penalty levied by the Assessing Officer being barred by limitation, is not sustainable. We, therefore, uphold the order of the Ld. CIT(A) quashing the penalty being barred by limitation and the grounds raised by the Revenue are accordingly dismissed.

47. Since Ld. Counsel for the assessee did not argue grounds of appeal No.4 and 5, the same are dismissed. The grounds of appeal No.1 and 11 being general in nature are also dismissed.

48. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 21st April, 2025.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 21st April, 2025
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	07.03.2025		Sr. PS/PS
2	Draft placed before author	13.03.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			