

IN THE INCOME TAX APPELLATE TRIBUNAL JODHPUR BENCH, JODHPUR.

BEFORE: DR. MITHA LAL MEENA, ACCOUNTANT MEMBER &

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER

I.T.A. No. 619/Jodh/2024
Assessment Year: 2011-12

Manish Sharma 309, Masjid Road, Keshavpura, Kota.	Vs.	The JCIT, Central Circle, Udaipur.
PAN/GIR No.: AWUPS7536B		
Appellant		Respondent

Appellant by	Sh. Gopichand Saraswat, C.A.
Respondent by	Sh. Karni Dan, Addl.CIT (Sr.DR

Date of Hearing	07/05/2025
Date of Pronouncement	25/06/2025

ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of Id. CIT (Appeals), Udaipur-2 dated 21.06.2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2011-12. The assessee has raised the following grounds of appeal

:-

- 1. Under the facts and circumstances of the case, the ld. CIT (A) has erred in not quashing the penalty order passed by ld. JCIT u/s 271E of the Income Tax Act, 1961.*
- 2. Under the facts and circumstances of the case, the ld. CIT (A) has erred in confirming the penalty of Rs. 60,000/- imposed by ld. JCIT u/s 271E of the Income Tax Act, 1961.*
- 3. The appellant craves leave to add, amend, alter or delete the ground of appeal on or before date of hearing.*

2. The brief facts of the case are that the assessee is an Individual and derives income from salary and income from other sources. The assessee filed his return of income for the year under consideration declaring total income of Rs. 2,02,660/- on 26.03.2012. A search and seizure operation under section 132(1) of the IT Act, 1961 was carried out on 02.07.2015 at various premises of M/s. Kota Dall Mill Group (Shri Rajendra Agarwal), Kota. The case of the assessee was also covered by the search action. Notice under section 153A was served on the assessee on 27.01.2016 and in compliance, the assessee filed his return of income on 12.03.2016 declaring total income of Rs. 2,03,260/-. Notice under section 143(2) was issued on 20.09.2016 which was duly served. Notice under section 142(1) along with questionnaire was issued on 20.09.2016. In compliance thereto, the assessee submitted relevant details/information which were considered. Upon consideration of the detailed information, the AO completed the assessment under

section 153A read with section 143(3) of the IT Act, 1961 vide his order dated 31.10.2017 at a total income of Rs. 2,45,270/- by making some additions. During the assessment proceedings, the AO noticed that during the F.Y. 2010-11, the assessee in violation of provisions of section 269T of the IT Act, 1961 has repaid in cash loan amounting to Rs. 60,000/- to Shri Sanjay Vyas. The explanation furnished by the assessee in this respect was considered by the AO but was not acceptable to him and hence he initiated penalty proceedings u/s 271E vide assessment order passed under section 153A read with section 143(3) of the IT Act, 1961 dated 31.10.2017.

Hence the matter was referred to Joint Commissioner for imposition of penalty under section 271E of the IT Act, 1961. The JCIT issued show cause notice under section 271E of the IT Act, 1961 dated 08.02.2018 to the assessee to show cause as to why penalty under section 271E of Rs. 60,000/- should not be imposed for contravention of provision of section 269T of the IT Act, 1961. Since the assessee has not replied to the show cause notice, the AO imposed penalty of Rs. 60,000/- under section 271E of the IT Act, observing that the assessee has violated the provisions of section 269T of the IT Act, 1961 vide his order dated 26.06.2018. Aggrieved by the order of the JCIT, the assessee preferred appeal before the Id. CIT (A), who after considering the detailed submissions of the assessee, dismissed the appeal of the assessee.

Now the assessee, has come in appeal before the Tribunal on the grounds reproduced herein above.

3. Before us, the ld. A/R of the assessee reiterated the submissions as were made before the ld. CIT (A). He further submitted his ground-wise written submission as under :-

“Ground 1.

Under the facts and circumstances the ld. CIT (A) has erred in not quashing the penalty order passed by ld. JCIT u/s 271E of the Income Tax Act, 1961.

Submission

Assessee's submission before ld. CIT (A)	Held by ld. CIT	Our submission before Hon'ble Bench										
Assessee submitted that penalty order u/s 271E passed by ld. JCIT is time barred by limitation. Ld. JCIT passed penalty order 27.07.2018 as against maximum permissible time upto 30.06.2018 from the end of the month in which reference to ld. JCIT was made for initiation of penalty proceeding u/s 271E of the Income Tax Act, 1961 i.e. October 2017. In support of this,	The ld. CIT (A) relied upon the judgment of Hon'ble ITAT Chennai Bench in case of Sri Sai Balaji Gas Cylinder (P) Ltd (2023) 155 taxmann.com 319 wherein the Hon'ble Bench has distinguished the case law Rishikesh Buildcon (P) Ltd (supra) by holding that in that judgment the Hon'ble High Court had considered the issue in light of the facts where there is huge gap of nearly five years from the date, the AO sent a proposal to the officer imposing penalty and the notice issued by officer imposing penalty and under those facts, the Hon'ble	On perusal of judgment of Hon'ble High Court in case of Rishikesh Buildcon (P) Ltd. (supra) the chronology of penalty proceeding u/s 271D is as under : <table border="1" data-bbox="982 1323 1377 1770"> <thead> <tr> <th>Particular</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>Date of initiation of penalty proceeding by AO</td> <td>17.12.2008</td> </tr> <tr> <td>Date of reference</td> <td>18.03.2009</td> </tr> <tr> <td>SCN Date</td> <td>24.03.2009</td> </tr> <tr> <td>Date of order passed u/s 271D</td> <td>29.09.2009</td> </tr> </tbody> </table> <p>Therefore, there is no gap of five year from the AO sent proposal to</p>	Particular	Date	Date of initiation of penalty proceeding by AO	17.12.2008	Date of reference	18.03.2009	SCN Date	24.03.2009	Date of order passed u/s 271D	29.09.2009
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<p>assessee relied following judgments of Delhi High Court:</p> <p>PCIT vs. Rishikesh Buildcon (P) Ltd (2023) 147 taxmann.com 220,</p> <p>PCIT vs. JKD Capital &Finlease Ltd (2017) 81 taxmann.com 80.</p>	<p>High Court came to the conclusion that the limitation prescribed u/s 275(1)(c) of the Act, runs from the date the AO sent proposal for initiation of penalty proceedings.</p> <p>In this judgment the Hon'ble Bench also distinguished the case of PCIT vs. Mahesh Wood Products (P) Ltd (2017) 82 taxmann.com 39 and held that the facts of the case are entirely different to the facts of the present case, and thus, we are of the considered view that the case laws relied upon by the Id. Counsel for the assessee is not applicable to the facts of the present case.</p>	<p>the officer imposing penalty and the notice issued by officer imposing penalty.</p> <p>The facts of case of Sri Sai Balaji Gas Cylinder (P) Ltd (supra) and exactly same with the case of Mahesh Wood Products (P) Ltd (supra). The chronology of penalty proceeding in both case is as under :</p> <table border="1" data-bbox="982 714 1435 1176"> <thead> <tr> <th>Particular</th> <th>Sri Sai case</th> <th>Mahesh Wood</th> </tr> </thead> <tbody> <tr> <td>Date of reference</td> <td>24.07.2018</td> <td>23.07.2012</td> </tr> <tr> <td>SCN Date</td> <td>03.08.2018</td> <td>28.08.2012</td> </tr> <tr> <td>Date of order passed u/s 271D/271E</td> <td>26.02.2019</td> <td>26.02.2012</td> </tr> <tr> <td>Limitation date of penalty order as per judgment</td> <td>28.02.2019</td> <td>31.01.2013</td> </tr> </tbody> </table> <p>The assessee also relied upon the judgment of Hon'ble Delhi High Court in case of PCIT vs. JKD Capital &Finlease Ltd. (2017) 81 taxmann.com 80 wherein it was held that penalty order u/s 271E passed beyond six month from month in which direction to initiate penalty proceeding u/s 271E was issued by order dated 28.12.2007. This judgment was not discussed by the Id. CIT (A) in his order. The facts of the judgment are same with the assessee's case as under :</p> <table border="1" data-bbox="982 1795 1435 1890"> <thead> <tr> <th>Particular</th> <th>Assessee's case</th> <th>JKD case</th> </tr> </thead> <tbody> <tr> <td>Date of</td> <td>30.10.2017</td> <td>28.12.2007</td> </tr> </tbody> </table>	Particular	Sri Sai case	Mahesh Wood	Date of reference	24.07.2018	23.07.2012	SCN Date	03.08.2018	28.08.2012	Date of order passed u/s 271D/271E	26.02.2019	26.02.2012	Limitation date of penalty order as per judgment	28.02.2019	31.01.2013	Particular	Assessee's case	JKD case	Date of	30.10.2017	28.12.2007
Particular	Sri Sai case	Mahesh Wood																					
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Date of	30.10.2017	28.12.2007																					

		assessment order		
		Date of reference	31.10.2017	28.12.2007
		Date of SCN	08.02.2018	12.03.2012
		Date of penalty order u/s 271D/271E	26.06.2018	20.03.2012
		<p>The judgment of JKD Capital &Finlease Ltd. has been further relied upon in recent case of CIT vs. Turner General Entertainment Networks India (P) Ltd. (2024) 168 taxmann.com 634 wherein it has been held that penalty proceeding is considered to be initiated on receipt of reference by JCIT from AO and not on issuance of show cause notice. In para 18 of the order, the Hon'ble High Court referred the para 10 of judgment of Hon'ble Supreme Court of India in case of Sh. Om Prakash Jaiswal vs. DK Mittal (2000) 3 SCC 171, wherein word "initiate" is defined to mean an introductory step or action, a first move. In para 19, the Hon'ble High Court held that the expression 'action for imposition of penalty is initiated' must, thus, clearly refers to the date on which the first introductory step for such action is taken, it must necessarily mean the start of such action. It must mean the commencement of action for imposition of action for imposition of penalty. As noted above, the AO had found that it was the admitted case that the assessee had defaulted in deduction of TDS, which it was obliged to do. It had, accordingly, made a reference to the Id. JCIT. This was obviously for the purposes of imposition of penalty. The reference, thus, clearly marked the first step for initiation of action for imposition of penalty. The show cause notice issued subsequently was to provide the assessee an opportunity to show cause why penalty should not be imposed.</p>		

In view of above, the judgement referred to above, the date of initiation of penalty is 31.10.2017 i.e. the date of passing of the assessment order and therefore, the penalty order passed on 27.06.2018 is beyond the time allowed upto 30.04.2018 under the provisions of section 271(1)(c). Accordingly, the impugned penalty order is barred by limitation and deserves to be quashed.”

4. On the other hand, the ld. Departmental Representative supported the orders of the revenue authorities.

Ground No. 1 relates to ld. CIT (A) has erred in not quashing the penalty order passed under section 271E of the IT Act, 1961.

5. We have heard the rival submissions, perused the material on record and gone through the orders of the lower authorities. We have also considered the case laws referred by both the sides. In this case the AO (JCIT) imposed the penalty under section 271E in contravention of provision of section 269T of the Income Tax Act, 1961. The penalty action was initiated vide assessment order passed under section 153A read with section 143(3) of the IT Act, 1961 on 31.10.2017 by making reference to Joint Commissioner for imposition of penalty under section 271E of the IT Act, 1961. Subsequently, the AO issued show cause notice under section 271E on 08.02.2018 to the assessee and thereafter the AO vide his penalty order under section 271E dated 26.06.2018 imposed the penalty of Rs. 60,000/- on the assessee. The contention of the assessee is that the penalty order under section

271E passed by the JCIT is time barred by limitation and the same is liable to be quashed. The ld. A/R of the assessee has drawn our attention to the provisions of section 271E and section 275 by submitting as under :-

- “ 1. *Order passed u/s 271E by ld. JCIT is time barred and hence bad in law.*
- i. *In this regard, we wish to reproduce the provision of section 275 of the Income Tax Act, 1961 which provides bar of limitation for imposing penalties under this Chapter XXI asunder :*

Section 275: Bar of limitation for imposing penalties.

(1) No order imposing penalty under this chapter shall be passed –

*(a) In a case where the **relevant assessment or other order** is the subject matter of appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to be Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later:*

Provided *that in a case where the relevant assessment or other order is the subject is subject matter of appeal to the Commissioner (Appeals) under section 246 or section 246A*

.....

(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 month 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.*

ii. ***Applicability of clause of sub-section (1) of section 275 in assessee's case.***

In this regard, we may submit as under :

<i>S.No.</i>	<i>Clause of sub-section(1) of section 275</i>	<i>Our submission</i>
1	(a)	<p><i>This clause is applicable only when the relevant assessment order or other order is the subject matter of appeal.</i></p> <p><i>However, in the present case, the issue under consideration has arisen during the course of assessment proceeding u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 and the assessee has not filed appeal against the relevant assessment order or other order. Therefore, this clause is not applicable for calculating period of limitation for imposing penalty.</i></p>

		<p><i>We may also submit that penalty proceeding u/s 271D/E for contravention of provision of section 269SS and 269T are not related to assessment proceedings or other proceedings, during which penalty proceedings under sections 271D and 271E might have been initiated, has no relevance for sustaining or not sustaining penalty proceedings, and therefore, clause (a) of section 275(1) cannot be attracted to such proceedings. The position is also upheld by the Hon'ble High Court of Rajasthan in case of CIT vs. Hissaria Bros (2008) 169 Taxman 262 which was also subsequently upheld by Apex Court.</i></p>
2	(b)	<p><i>This clause is applicable when relevant assessment or other order subject matter of revision under section 263 or section 264.</i></p> <p><i>However, the present case is not subject to revisionary proceeding. Therefore, the clause is also not applicable for calculating period of limitation for imposing penalty.</i></p>
3	(c)	<p><i>This clause is residuary clause and applicable when above both clause are not applicable.</i></p> <p><i>Since the clauses (a) and (b) of sub-section (1)</i></p>

		<i>of section 275 is not applicable in the present case, therefore, this clause is applicable.</i>
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Conclusion:

Period of limitation for imposing penalty shall be calculated in view of clause (c) of sub-section (1) of section 275 of Income Tax Act, 1961 in the present case.

- iii. *As per the clause (c) of sub-section (1) of section 275, the order imposing penalty ought to have been passed as under, whichever period expires later :*

Provision	Our submission
<i>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.</i>	<i>The ld. AO initiated penalty u/s 271E vide assessment order u/s 153A r.w.s. 143(3) dated 31.10.2017 (during the FY 2017-18 by making reference to Joint Commissioner of Income Tax for imposition of penalty u/s 271E of Income Tax Act, 1961. Therefore penalty proceeding should have been completed on or before 31.03.2018 as per this clause.</i>
<i>Six month from the end of the month in which action for imposition of penalty is initiated.</i>	<i>1. As stated above, the ld. AO initiated penalty proceeding u/s 271E on 31.10.2017 by making reference to the Joint</i>

	<p><i>Commissioner of Income Tax.</i></p> <p>2. <i>The six month expires from the date 31.10.2017 on 30.04.2018.</i></p> <p>3. <i>Therefore, order u/s 271E should have been passed on or before 30.04.2018 as per this clause.</i></p>
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Conclusion:

Since, in view of the above, the later period expires on 30.04.2018. Therefore, the penalty proceeding must have been completed till 30.04.2018.

- iv. *Since in the present case penalty order u/s 271E is passed on 26.06.2018 i.e. after maximum limitation period ended on 30.04.2018. Therefore, penalty order passed u/s 271E is not valid and bad in law.*

In support of his case, the ld. A/R also placed reliance on the judgment of Hon'ble Delhi High Court in the case of PCIT vs. M/s. Rishikesh Buildcon (P) Ltd. (2023) 147 taxmann.com 220 (Delhi) wherein it has been held that *Quantum proceedings with respect to assessee was completed in December, 2008 - Further, penalty proceeding against assessee inter alia under section 271D for violating provision of section 269SS was also initiated by Assessing Officer at time of completion of said assessment – SCN under section 271D was issued by prescribed authority on 24.03.2009 – Further, penalty order was passed on 29.09.2009 – Whether where Assessing Officer had initiated penalty proceedings in his/her assessment order, said date was to*

be taken as relevant date as far as section 271(1)(c) was concerned and not date on which SCN was issued – Held, yes – Whether, since Assessing Officer initiated penalty proceedings in December, 2008 and six months from end of month in which action of imposition of penalty was initiated expired on 30.06.2009, penalty order passed on 29.09.2009 was barred by limitation – Held, yes [para 12][in favour of assessee].

The Id. CIT (A) relied upon the judgment of coordinate bench of the ITAT Chennai Bench in the case of Sri Sai Balaji Gas Cylinder (P) Ltd. (2023) 155 taxmann.com 319 wherein the Coordinate Bench has distinguished the case law of Rishikesh Buildcon (P) Ltd. (supra) by holding that in that judgment the Hon’ble High Court had considered the issue in light of the facts where there is huge gap of nearly five years from the date, the AO sent a proposal to the officer imposing penalty and the notice issued by officer imposing penalty and under those facts, the Hon’ble High Court came to the conclusion that the limitation prescribed u/s 275(1)(c) of the Act, runs from the date the AO sent proposal for initiation of penalty proceedings. The Id. A/R of the assessee submitted that the case law relied upon by the Id. CIT (A) is not applicable in the instant case by stating as under :*On perusal of judgment of Hon’ble High Court in case of Rishikesh Buildcon (P) Ltd (supra) the chronology of penalty proceeding u/s 271D is as under :*

<i>Particular</i>	<i>Date</i>
<i>Date of initiation of penalty proceeding by AO</i>	<i>17.12.2008</i>
<i>Date of reference</i>	<i>18.03.2009</i>
<i>SCN Date</i>	<i>24.03.2009</i>
<i>Date of order passed u/s 271D</i>	<i>29.09.2009</i>

Therefore, there is no gap of five year from the AO sent proposal to the officer imposing penalty and the notice issued by officer imposing penalty.

The Id. A/R further placed reliance on the judgment of Hon’ble Delhi High Court in the case of PCIT vs. JKD Capital &Finlease Ltd. (2017) 81 taxmann.com 80 (Delhi) wherein it has been held that “ *in terms of the provision of section 275(1)(c), 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 were completed on 28.12.2007. Going by this date, the penalty order could not have been passed later than 31.03.2008. 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 as 30.06.2008. The later of the two dates was 30.06.2008. Thus, impugned penalty order was barred by limitation.”

In the instant case, at the level of the Assessing Officer, the quantum proceedings were completed on 31.10.2017. Going by this date, the penalty order could not have been passed later than 31.03.2018. 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 on 31.10.2017, the last date by which the penalty order could have been passed as 30.04.2018. The later of the two dates was 30.04.2018. Thus, impugned penalty order passed on 26.06.2018 was barred by limitation.

The Id. AR of the assessee further placed reliance on the judgment of the Hon'ble Delhi High Court in the case of CIT (TDS) vs. Turner General Entertainment Networks India (P) Ltd., (2024) 168 taxmann.com 634 (Delhi) wherein the Hon'ble High Court has held as under :-

- In the given context, this was in the beginning of the action for imposition of penalty. The same had commenced earlier with the Assessing Officer determining that there was a cause for such imposition [Para 20]
- The expression 'action for imposition of penalty is initiated' must, thus, clearly refers to the date on which the first introductory step for such action is taken, it must necessarily mean the start of such action. It must mean the commencement of action for imposition of penalty. As noted

above, the Assessing Officer had found that it was the admitted case that the assessee had defaulted in deduction of TDS, which it was obliged to do. It had, accordingly, made a reference to the Jt. Commissioner. This was obviously for the purpose of imposition of penalty. The reference, thus clearly marked the first step for initiation of action for imposition of penalty. The show cause notice issued subsequently was to provide the assessee an opportunity to show cause why penalty not be imposed [Para 19].

- In the case of *Om Prakash Jaiswal v. D.K. Mittal* (2000) 3 SCC 171, the Supreme Court had considered the meaning of the expression 'initiate any proceedings for contempt' by referring to the dictionary meaning of the said word. [Para 18].

In view of the above facts and respectfully following the judicial precedents narrated herein above, we are of the view that the penalty order passed is barred by limitation and the same is quashed. Thus, we set aside the order of the Id. CIT (A). The ground no.1 of the appeal of the assessee is allowed.

6. Since we have allowed ground no. 1 by quashing the penalty order, ground no. 2 has become academic in nature, and the same needs no adjudication.

7. In the result, appeal of the assessee is allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-
(DR. S. Seethalakshmi)
Judicial Member

Dated 25/06/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order