

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM**

**ITA Nos. 294 to 298/Coch/2025
Assessment Years: 2003-04 to 2006-07**

Menachery Antony Jos Appellant
Menachery House, Pallippuram
Kallikad, Palkkad 678006
[PAN: ABPPJ8545H]

vs.

Joint Commissioner of Income Tax Respondent
Palakkad Range, Palakkad

Appellant by: Shri C.B.M. Warriar, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 04.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)] dated 13.03.2025/30.10.2024 for Assessment Years (AY) 2003-04 to 2006-07 confining penalty u/s. 271E/271D of the Income Tax Act, 1961 (hereinafter "the Act").

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 294/Coch/2023 for AY 2003-04 are stated herein.

4. Brief facts of the case are that the appellant is an individual deriving income from business. Search and Seizure operations u/s. 132 were conducted in the residential premises of the appellant on 04.03.2009 and survey operations u/s. 133A were conducted in the business premises of the appellant. During the course of search and seizure operations certain incriminating material was found. Therefore, notice u/s. 153A of the Act was issued to the appellant. The assessment was completed u/s. 143(3) r.w.s. 153A on 31.12.2010. Subsequently, the assessment order was modified consequent to the order passed u/s. 263/254 of the Act on 18.02.2014. Subsequently, the AO issued a notice u/s. 154 of the Act seeking to initiate penalty proceedings u/s. 271E for repayment of loan of Rs. 2,10,000/- in violation of pos 269T of the Act. In response to the notice u/s. 154, the appellant filed detailed submission that penalty is not warranted u/s. 271E of the Act. The AO had not passed any order u/s. 271E of the Act. However, subsequently, the Joint Commissioner of Income Tax (JCIT), Palakkad initiated proceeding u/s. 271E on 21.04.2014. In response to the show cause notice the appellant submitted that the transaction in question is not a loan or deposit and, therefore the question of levy of penalty does not arise as repayment was made between the appellant and his wife

is purely personal transaction. However, rejecting the contention of the appellant the AO proceeded with levy of penalty of Rs. 2,10,000/- u/s. 271E of the Act vide order dated 30.10.2014.

5. Being aggrieved, an appeal was filed before the CIT(A), contending that the penalty proceedings were barred by limitation and the transaction between the appellant and wife does not tantamount to 'loan' or 'deposit' as the money was paid to wife for meeting personal expenses and also because of genuineness of the transaction no penalty can be levied placing reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Sunilkumar Goel [2009] 315 ITR 163. However, the learned CIT(A) rejected the above submission and confirmed the levy of penalty.

6. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

7. The learned counsel for the assessee submits that the subject transaction is purely a personal transaction and it cannot be termed as 'loan' placing reliance on the decision of the Hon'ble P&H High Court in the case of Sunilkumar Goel (supra). It is further submitted that the penalty proceedings are bad in law as the proceedings are barred by limitation placing reliance on the decision of the Hon'ble Karnataka High Court in the case of Shanbhag Restaurant v. DCIT [2004] 266 ITR 393.

8. On the other hand, the learned Sr. DR submits that no interference is called for.

9. We have heard the rival contentions and perused the material available on record. The issue that arises for our determination is whether the CIT(A) was right in law in confirming the levy of penalty u/s. 271E of the Act having regard to the fact of the case. A perusal of the order passed by the JCIT u/s. 271E clearly shows that the AO/JCIT initiated the proceedings u/s. 271E merely based on the information furnished by the Chartered Accountant in the tax audit report u/s. 44AB of the Act. The JCIT had not brought any material on record to show that the transaction between the appellant and his wife is in the nature of 'loan' or 'deposit'. There is no material on record to suggest that there were any terms between the parties as to the payment of interest or time of repayment, etc. The explanation of the appellant that the money was given to his wife to meet the personal expenses remained uncontroverted by the JCIT. Thus, in our considered opinion the essential ingredient required to be satisfied to come within the ambit of transaction of 'loan' or 'deposit' does not stand satisfied, which is a pre-requisite to allege that the appellant had violated provisions of section 269T of the Act, i.e. repayment of loan in cash other than by mode of cheque or demand draft. Reference in this regard can be made to the decision of the Hon'ble Gujarat High Court in the case of Dr. Rajaram L Akhani v. ITO [2017] 395 ITR 497, wherein it was held that a

transaction between son and the assessee does not tantamount to loan or deposit. Therefore, the proceedings initiated u/s. 271E is bad in law and the order passed by the JCIT levying penalty is hereby quashed. The appeal stands allowed.

10. Since identical issues and facts are involved in assessee's appeal ITA Nos. 295 to 298/Coch/2025, our findings in ITA No. 294/Coch/2025 shall apply mutatis mutandis to these appeals also.

11. In the result, the appeals filed by the assessee stand allowed

Order pronounced in the open court on 31st July, 2025.

Sd/
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 31st July, 2025
n.p.

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin