आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री रविश सूद, न्यायिक सदस्य एवं

श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.575 to 578/Hyd/2025**
(निर्धारण वर्ष/Assessment Years:2009-10, 2010-11 & 2013-14)

Shri Balreddy Gade, Hyderabad. PAN:ADEPG7858D	**Vs.**	Addl. Commissioner of Income Tax, Central Range-1, Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K C Devdas, C.A.	
राजस्व द्वारा/Revenue by::	Dr. Narendra Kumar Naik, CIT-DR	
सुनवाई की तारीख/Date of hearing:	07/08/2025	
घोषणा की तारीख/Pronouncement:	28/08/2025	

आदेश/ORDER

PER BENCH :

These appeals are filed by Shri Balreddy Gade ("the assessee"), feeling aggrieved by the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), all dated 13.03.2025 for the A.Ys. 2009-10, 2010-11 & 2013-14 respectively. Since these appeals are related to the same assessee and issues are identical in nature, they are

heard together and one consolidated order is being passed for the sake of convenience and brevity.

2. We take up ITA No.575/Hyd/2025 as lead appeal and the grounds raised in the appeal are as under :

> *1. That the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ['CIT(A)'] has erred in law and on facts in upholding the penalty of ₹43,69,500/- levied under Section 271D of the Income-tax Act, 1961 ('the Act'), without appreciating that the said amount was already assessed as unexplained cash credit under Section 68 of the Act, thereby losing its character as a 'loan' or 'deposit' within the meaning of Section 269SS, making the imposition of penalty under Section 271D legally unsustainable.*
>
> *2. That the learned CIT(A) has failed to appreciate that once the amount in question has been treated as the appellant's own income under Section 68 of the Act, it ceases to be a 'loan' or 'deposit' received from a third party, thereby rendering Section 269SS inapplicable, as upheld by various judicial precedents.*
>
> *3. That the learned CIT(A) has erred in law and on facts in confirming the penalty under Section 271D without considering that the learned Assessing Officer ('AO') has also initiated penalty proceedings under Section 271(1)(c) of the Act for alleged concealment of income on the same amount, thereby subjecting the appellant to double jeopardy, which is contrary to settled legal principles and in gross violation of the principles of natural justice.*

4. That the learned CIT(A) has failed to appreciate that the cash transactions were incorporated in the memorandum books of accounts solely based on the seized and impounded materials obtained during the search and seizure operation under Section 132 and the survey operation under Section 133A of the Act, and as such, the same constitutes admissible evidence, which cannot be selectively relied upon by the department for penalizing the appellant.

5. That the learned CIT(A) has failed to appreciate that once the revenue has treated the seized materials as reliable evidence for making an addition under Section 68, the same documents must be considered in totality, and the department cannot approbate and reprobate by selectively disregarding the appellant's reliance on the same materials while imposing a penalty under Section 271D, as per the settled judicial principles.

6. That the learned CIT(A) has erred in confirming the penalty under Section 271D in a mechanical manner, without appreciating that the memorandum books of accounts were not voluntarily maintained by the appellant in the normal course of business, but were prepared solely under the direction of the department based on the seized and impounded materials, and therefore, cannot be used against the appellant for penal purposes.

7. That the learned CIT(A) has failed to appreciate that the burden of proving that the transactions recorded in the memorandum books were incorrect or non-genuine lies with the department, and in the absence of any such finding, no adverse inference should have been drawn against the appellant for the purpose of levying penalty under Section 271D.

8. That the learned CIT(A) has erred in not appreciating that the assessment was completed ex-parte under Section 144 r.w.s. 153A of the Act, thereby denying the appellant a reasonable opportunity to substantiate the sources of the alleged cash loans, which resulted in an arbitrary addition under Section 68 and the consequent imposition of penalty under Section 271D.

9. That the learned CIT(A) has erred in not appreciating that the penalty order is vitiated by a failure to consider the principles of natural justice, as the explanations and justifications submitted by the appellant were summarily disregarded without assigning any cogent reasons, making the penalty order arbitrary and unsustainable in law.

10. That the learned CIT(A) has erred in law and on facts in failing to appreciate that even assuming without admitting that the transactions in question fall within the purview of Section 269SS, the levy of penalty under Section 271D is discretionary and not automatic, and considering the peculiar facts and circumstances of the case, the imposition of penalty was wholly unjustified.

11. That the learned CIT(A) has failed to appreciate that the appellant had a reasonable cause under Section 273B of the Act for accepting cash transactions, as the real estate business inherently involves immediate cash dealings due to market practices and lack of access to institutional financing, and therefore, no penalty under Section 271D ought to have been levied.

12. That without prejudice to the foregoing grounds, the penalty of ₹43,69,500/- imposed under Section 271D is excessive, arbitrary, and highly disproportionate, and therefore, liable to be reduced in the interest of justice.

13. That the appellant craves leave to amend or alter any ground or add a new ground which may be necessary. Prayer The appellant, therefore, prays that the Hon'ble Tribunal may kindly:

a. Delete the penalty of ₹43,69,500/- levied under Section 271D of the Act.

b. Quash the penalty proceedings initiated under Section 271(1)(c) of the Act.

c. Hold that the transactions recorded in the memorandum books, being derived from the seized and impounded materials, constitute admissible evidence and must be treated as a whole, rather than being selectively applied for penal consequences.

d. Grant such other relief as may be deemed just and proper in the facts and circumstances of the case."

3. The assessee has raised the additional grounds as under :

"1. That the learned ACIT, Central Range-1, Hyderabad has erred in law and on facts in passing the penalty order u/s. 271D of the Income Tax Act, 1961, dated 31.08.2017, which is barred by limitation as per section 275(1)(c) of the Act. The penalty proceedings were initiated by the Assessing Officer on 18.01.2017, and therefore, the last date for passing the order was 31.07.2017, being six months from the end of the month in which the reference was received. Since the order was passed on 31.08.2017, it is barred by limitation and liable to be quashed."

4. In this context the Learned Authorised Representative ("Ld. AR") submitted that the additional ground so raised are

admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional ground noted above which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the ITAT Rules owing to the fact that objections raised in additional ground are legal in nature for which relevant facts are stated to be emanating from the existing records.

5. The brief facts of the case are that, the assessee is engaged in the business of real estate development. During the year under consideration, the assessee had accepted cash loans aggregating to Rs.43,69,500/-. Accordingly, a show cause notice under section 271D of the Income Tax Act, 1961 ("the Act") was issued to the assessee by the Learned Additional Commissioner of Income Tax ("Ld. Addl. CIT") on 14.02.2017. After considering the submissions of the assessee, the Ld. Addl. CIT imposed a penalty of Rs.43,69,500/- under section 271D of the Act vide order dated 31.08.2017. The assessee's appeal before the Ld. CIT(A) was dismissed.

6. Aggrieved with the order of Ld. CIT(A), the assessee is now in appeal before us. The Ld. AR began by challenging the penalty order on the ground of limitation prescribed under section 275(1)(c) of the Act. He submitted that as per the said provision, no order imposing a penalty shall be passed after the expiry of the financial year in which the proceedings, in the course of which the penalty action was initiated, are completed, or six months from the end of the month in which the action for imposition of penalty is initiated, whichever period expires later. He further submitted that, in the present case, the penalty proceedings were initiated by the Learned Assessing Officer ("Ld. AO") on 18.01.2017. Therefore, the last date for passing the penalty order would be 31.07.2017, being six months from the end of the month in which penalty proceedings were initiated. Since the order was passed on 31.08.2017, it is barred by limitation and liable to be quashed.

7. Per contra, the Learned Departmental Representative ("Ld. DR") submitted that under section 271D of the Act, only the Joint Commissioner (including the Ld. Addl. CIT) is empowered to

impose a penalty, and therefore only the Joint Commissioner can be said to have initiated the penalty proceedings. The date of show cause notice issued by the Ld. Addl. CIT, i.e.14.02.2017, should be considered as the date of initiation. Inviting our attention to page no. 2 of the penalty order, he submitted that the show cause notice under section 271D of the Act was issued by the Ld. Addl. CIT on 14.02.2017, and therefore, as per section 275(1)(c) of the Act, the last date for passing the order was 31.08.2017. Since the penalty order was passed on 31.08.2017, it is within the prescribed time limit. The Ld. DR placed reliance on the decision of the Hon'ble Kerala High Court in Grihalakshmi Vision vs. Addl. CIT [order dated 07.08.2015 in ITA Nos.83 & 86 of 2014], wherein it was held that the date of issue of notice by the Joint Commissioner would be treated as the date of initiation of penalty. He also relied on CBDT Circular No.09/DV/2016 dated 26.04.2016, which directs that officers below the rank of Joint Commissioner should not issue penalty notices under sections 271D/271E of the Act. Finally, the Ld. DR submitted that, the date of show cause notice issued by the Ld. Addl. CIT

should be treated as the date of initiation of penalty. Accordingly, the penalty order passed by the Ld. Addl. CIT is within the limitation period as per section 275(1)(c) of the Act.

8. In the alternative, the Ld. DR submitted that as per Explanation (i) to section 275 of the Act, where there is a change of incumbent under section 129 of the Act during the proceedings, the period of rehearing in accordance with proviso to section 129 of the Act, should be excluded from the limitation computation. Inviting attention to page no. 2 of the penalty order, he pointed out that there was a change of incumbent during the penalty proceedings, and the incoming officer issued letters dated 18.07.2017 and 08.08.2017 giving opportunity to the assessee. The assessee filed his first reply on 22.08.2017. Therefore, the period from 18.07.2017 to 22.08.2017 i.e. the period from the date of notice giving opportunity to the assessee till the response given by the assessee, should be excluded. After such exclusion, the penalty order would still be within limitation. Accordingly, the Ld. DR prayed before the bench to dismiss the appeal of the assessee.

9. In rejoinder, the Ld. AR submitted that the argument of the Revenue that the initiation of penalty should be reckoned from the date of show cause notice issued by the Ld. Addl. CIT, i.e., 14.02.2017, is incorrect. He relied heavily on the decision of the Hon'ble Karnataka High Court in the case of PCIT vs. K. Umesh Shetty [170 taxmann.com 748], wherein, after considering the decision of Hon'ble Kerala High Court in Grihalakshmi Vision vs. Addl. CIT and CBDT Circular No.09/DV/2016 dated 26.04.2016, it was held that the reference by the Ld. AO to the Ld. Addl. CIT would be the triggering point for initiation of penalty proceedings. He further argued that, this judgment of the Hon'ble Karnataka High Court, being later in time (dated 17.01.2025) and after the CBDT circular, should prevail in the present case. Accordingly, the Ld. AR submitted that, the order passed by the Ld. Addl. CIT is barred by limitation and liable to be quashed.

10. Further, as regards the Revenue's alternate contention of exclusion of certain time periods under Explanation (i) to section 275 of the Act, the Ld. AR argued that such exclusion is permissible only when there is a specific request from the

assessee to the succeeding officer for rehearing in accordance with proviso to section 129 of the Act. However, in the present case, no such request was ever made by the assessee. Reliance was placed on the decision of the Hon'ble Patna High Court in CIT vs. S.P. viz Construction Co. [176 ITR 34], wherein it was held that when the assessee demands a rehearing under section 129 of the Act, then only the period of rehearing be excluded from the computation of limitation. Accordingly, the Ld. AR submitted that, since there is no specific request from the assessee for rehearing of the case, no extension of time will be available to the revenue in accordance with Explanation (i) to section 275 of the Act. The Ld. AR reiterated that, the order passed by the Ld. Addl.CIT is barred by limitation and liable to be quashed.

11. We have heard the rival contentions and gone through the material available on record. As far as the alternate submission of the Revenue under Explanation (i) to section 275 of the Act is concerned, it is crucial to go through the same along with section 129 of the Act, which is reproduced as under :

" Bar of limitation for imposing penalties.

275. *(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[58-59]***[****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*[58-59]***[****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 :*

……..

……..

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) ……

(iii) …….

shall be excluded."

"Change of incumbent of an office.

129. Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard."

12. On perusal of above, it is abundantly clear that, where there is a change of incumbent, the succeeding officer shall give the assessee an opportunity of being reheard, and if such an opportunity is demanded by the assessee, the time so taken shall be excluded in computing the limitation. In the present case, the Revenue has not been able to produce any evidence to demonstrate that the assessee had specifically requested for rehearing under section 129 of the Act. The exclusion contemplated in the Explanation (i) to section 275 of the Act applies only when there is such a request. In this regard, we have gone through the decision of the Hon'ble Patna High Court in CIT vs. S.P. viz Construction Co. (supra), wherein at para no.10 of its order, the Hon'ble High Court has stated as under :

*"**10**. No one appeared on behalf of the assessee.*

The first point to be considered is as to whether by reason of the proviso to section 129, the ITO was entitled to the benefit of the exclusion of any time which may have been taken by him to give an

opportunity to the assessee of being heard in consonance with the principles of natural justice. No doubt, under section 129 noted hereinbefore, an assessee has a right to demand that before the successor-ITO continues any proceeding initiated by his predecessor or any part thereof, he should reopen any part of the proceeding or rehear the assessee before any final order of assessment was passed. In the instant case, there was no such demand from the assessee under section 129. The successor-ITO was entitled under the said section to continue the proceeding from the stage at which the same had been left by his predecessor. At the highest, it can be contended that the successor-ITO, who continues the proceeding from the stage at which the same had been left should have issued a further notice to the assessee stating that he intended to continue the proceeding. The successor-ITO did not do so in the instant case."

13. On perusal of above, we found that, there should be a specific demand for rehearing from the assessee under section 129 of the Act. However, in the present case before us, we do not find any specific demand for rehearing from the assessee. Therefore, considering the observation of the Hon'ble Patna High Court, we hold that, in the absence of such a request, the question of exclusion does not arise. Accordingly, the alternate plea of the Revenue is rejected.

14. The other core issue before us is whether the limitation is to be reckoned from the date of reference by the Ld. AO to the Ld. Addl. CIT (18.01.2017) or from the date of notice issued by the Ld. Addl. CIT (14.02.2017). We have considered the decisions cited by both the parties. The Hon'ble Kerala High Court in Grihalakshmi Vision (supra) held that the initiation date is the date of notice issued by the Joint Commissioner. We have also gone through the decision of the Hon'ble Karnataka High Court in PCIT vs. K. Umesh Shetty (supra), wherein from para nos.6.7 to 6.9 of the order, the Hon'ble High Court has dealt with the issue, which is to the following effect :

> *" **6.7** In the facts of this case, these twin purposes can be achieved by treating the reference by the ITO to the Additional Commissioner as the triggering point or initiation of penalty proceedings. The ITO vide letter dated 16.11.2016 had admittedly made the reference. The Additional Commissioner of Income Tax issued the Show Cause Notice only on 10.11.2017 (nearly a year later) proposing the levy of penalty u/s 271D of the Act. The Penalty Order was made on 22.02.2018. If the reckoning point is 16.11.2016, it is clear that the proceedings were completed beyond the period of limitation, as rightly contended by the learned counsel appearing for the Assessee. Even otherwise, the concept of delay & latches would crop in; no explanation whatsoever has been offered by the Revenue for the laxity shown in belatedly issuing the show cause notice / proposition notice which they claim, amounted to initiation of penalty*

proceedings. This view has animated the reasoning of the impugned order of the Tribunal, may be a bit inarticulately.

***6.8**. The reliance of Panel Counsel for the Revenue on the Coordinate Bench decision in Commissioner of Income-tax v. Tam Tam Pedda Guruva Reddy (2006) 287 ITR 72 (Kar) does not come to his aid since the same has been rendered largely fact-specific. The other decision namely Grihalakshmi Vision v. Additional Commissioner of Income-tax (2015) 63 taxmann.com 196 (Kerala) observed as under:*

"Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty..."

These observations arguably support the view of Revenue, is true. However, we respectfully disagree with the said view. That apart, a perusal of the said judgment does not show that there was any reference made by the ITO to the competent authority, unlike in the case at hand. Further the following observations in para 10 in D M Manasvi v. Commissioner of Income Tax (1973) 3 SCC 207 would cast some doubt on the correctness of Grihalakshmi supra.

_"We are also not impressed by the argument advanced on behalf of the appellant that the proceedings for the imposition of penalty were initiated not by the Income Tax Officer but by the Inspecting Assistant Commissioner when the matter had been referred to him under section 274(2) of the Act. The proceedings for the imposition of penalty in terms of sub- section (1) of section 271 have necessarily to be initiated either by the Income Tax Officer or by the Appellate Assistant Commissioner. The fact that the Income Tax Officer has to refer the case to the Inspecting Assistant Commissioner if the minimum imposable penalty exceeds the sum of rupees one thousand in a case falling under clause (c) of sub-section (1) of section 271 would not show that the proceedings in such a case cannot be initiated by the Income Tax Officer. The Income Tax Officer in such an event can refer the case to the Inspecting Assistant

Commissioner after initiating the proceedings. It would, indeed, be the satisfaction of the Income Tax Officer in the course of the assessment proceedings regarding the concealment of income which would constitute the basis and foundation of the proceedings for levy of penalty".

***6.9** The reliance of the Panel Counsel on CBDT Circular No.9/DV/2016 dated 26.04.2016 has been issued in terms of GRIHALAKSHMI supra. Para 4 of the Circular states: The above judgment reflects the "Departmental View". However, para 5 in a way suggests to follow the decision of a High Court, within whose territorial jurisdictional limits the penalty proceedings are taken up. The same reads as under:*

"Where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for." "

15. On perusal of above we found that, the Hon'ble Karnataka High Court in PCIT vs. K. Umesh Shetty (supra), after considering the decision of Hon'ble Kerala High Court as well as the CBDT Circular No.09/DV/2016, has held that the reference made by the Ld. AO to the Ld. Addl. CIT is the date of initiation of penalty proceedings for the purpose of section 275(1)(c) of the Act. This decision of the Hon'ble Karnataka High Court, being later in time

(17.01.2025) and after the CBDT circular (supra), deserves to be followed.

16. Further, even assuming there are two possible interpretations, one favouring the Revenue (Hon'ble Kerala High Court) and the other favouring the assessee (Hon'ble Karnataka High Court), the settled law laid down by the Hon'ble Supreme Court in CIT vs. Vegetable Products Ltd. [88 ITR 192] is that where two views are reasonably possible, the one favourable to the assessee must be adopted. Therefore, applying the ratio of the Hon'ble Karnataka High Court to the present case, we hold that the penalty proceedings are deemed to have been initiated on 18.01.2017, when the Ld. AO made a reference to the Addl. CIT. Consequently, the last date for passing the penalty order would be 31.07.2017. Since the order was passed on 31.08.2017, it is barred by limitation.

17. In view of the above discussion, we hold that the Revenue's alternate plea for exclusion of time under Explanation (i) to section 275 of the Act fails, as there is no evidence of any request by the assessee for rehearing. Further, following the

binding decision of the Hon'ble Karnataka High Court in PCIT vs. K. Umesh Shetty (supra) and in light of the principle laid down by the Hon'ble Supreme Court in CIT vs. Vegetable Products Ltd. (supra), we hold that, the penalty order dated 31.08.2017 is barred by limitation under section 275(1)(c) of the Act. Accordingly, we quash the penalty order passed by the Ld. Addl. CIT.

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

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The issues involved in these appeals are identical to the issues involved in the appeal in ITA No.575/Hyd/2025, wherein we have allowed the appeal of the assessee. Therefore, our discussion and findings in ITA No.575/Hyd/2025 are mutatis mutandis applicable to these appeals also. As the appeal of the assessee in ITA No.575/Hyd/2025 has been allowed, these appeals of the assessees are also allowed.

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

Order pronounced in the open Court on 28th August, 2025.

Sd/-	**Sd/-**
(**RAVISH SOOD**) JUDICIAL MEMBER	(**MADHUSUDAN SAWDIA**) ACCOUNTANT MEMBER

Hyderabad.
Dated: 28.08.2025.

** Reddy gp*

Copy of the Order forwarded to :

1.	Shri Balreddy Gade, Plot No.20, Tulasi Gardens, Yapral, Secunderabad-500017
2.	Addl. CIT, Central Range 1, Hyderabad.
3.	Pr.CIT (Central), Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,