

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)

**Before: Shri T.R. Senthil Kumar, Judicial Member And
Shri Bijayananda Pruseth, Accountant Member**

**ITA No: 709 & 710/SRT/2025
Assessment Year: 2009-10**

Anand Mahendra Kapadia Titaanium Business Hub, 2 nd Floor, Sarsana, Near VIP Crossing, Surat Khajod Road, Bhimrad, Surat-395007 PAN: ADYPK6654R (Appellant)	Vs	Income Tax Officer Ward-3(2)(1), Surat (Respondent)
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**Assessee Represented: Shri Rasesh Shah, CA
Revenue Represented: Shri Ajay Uke, Sr. D.R.**

Date of hearing : 13-11-2025
Date of pronouncement : 25-11-2025

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against two separate appellate orders both dated 24.01.2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the penalty levied under section 271D and 271E of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2009-10.

2. The registry has noted that there is delay of 91 days in filing the above appeals. The assessee submitted that in Form No. 35, the email id of his Counsel namely srshethtax@gmail.com was mentioned. However Ld. CIT(A) has sent the order to email ID to hemtush@gmail.com. When the assessee randomly checking the IT Portal, he came to know about the impugned appellate orders passed by Ld. CIT(A) which has resulted in the delay of 91 days in filing the above appeals. Therefore, requested to condone the delay in the interest of Principle of Natural Justice. We are satisfied with the reasons stated for the delay of 91 days in filing the appeals and the same are hereby condoned.

2. Brief facts of the case is that the assessee is an individual filed his Return of Income on 12-09-2009 for the Asst. Year 2009-10 admitting income of Rs.3,84,460/-. Information received during the course of search in the case of M/s.Creative Trendz Pvt. Ltd. and seized material contained copy of ledger in the name of Shri Anandbhai Kapadiya having accepted cash loans amounting to Rs.59,00,000/- on various dates and also repaid the said loan in cash. Therefore, the assessment was reopened by issuing a notice u/s. 148 on 31-03-2016.

3.1. In response to the notice, the assessee requested to treat the original return in compliance to the 148 notice. Before the assessing officer, the assessee submitted that he has neither received nor repaid loans amounting to Rs.59 lakhs and has no connection with the persons from whom premises the documents seized, therefore requested to drop the reassessment proceedings.

The assessing officer found that there is an entry of interest paid of Rs.2,97,600, therefore made the same as addition and also proposed for penalty proceedings u/s. 271D and 271E of the Act for violations of provisions of Section 269SS and 269T for accepting and repaying loans in cash in excess of Rs.20,000/-.

3.2. The above assessment order was passed by the A.O. on 08-12-2016. Later Joint Commissioner of Income Tax issued a show cause notice dated 23-01-2018 as to why not to impose penalty u/s.271D and 271E of the Act for accepting and repaying loans in cash amount exceeding Rs. 20,000/- which are contravention to the provisions of Section 269SS and 269T of the Act. There was no response to the above SCN by the assessee. Thereafter two more opportunities given to the assessee. However, assessee sought for adjournment not filed any details that made the Joint Commissioner to impose penalty of Rs.59,00,000/- each u/s. 271D and 271E of the Act vide order dated 28-09-2018 respectively.

4. Aggrieved against the penalty orders, assessee filed appeals before Ld. CIT(A) who has confirmed the levy of penalty by observing as follows:

".... 8.2.9. The appellant's contention that the penalty is time barred considering the date of assessment order us/ 143(3) r.w.s. 147 of the Act dtd 08.12.2016 is not acceptable. It is a fact that penalty order us/ 271D of the Act was passed on 28.09.2018. However, the proceedings u/s 271D of the Act is an independent proceeding having nothing to do with the assessment proceedings. Penalty proceedings u/s 271D of the Act and assessment proceedings u/s 143(3)/147 of the Act are independent of each other and statute does not provide the time limit for continuity of these exclusive and independent proceedings. The argument of the assessee that the transactions pertain to FY 2008-09 and penalty is finalized in the FY 2018-19 after a lapse of 9 years from the alleged date of transaction, for loss of reasonable time, the penalty order is bad in law

is not correct. In this case, incriminating evidence regarding unaccounted transactions of the appellant was unearthed during the course of search action in the case of M/s Creative Trendz Pvt Ltd. It is to be noted that the search action was not in the case of the assessee and primary focus was on the facts relating to the searched party. Subsequently, the seized material was examined by the DCIT Central Circle 2, Surat and in the course of analysis of the seized material, the DCIT Central Circle 2, Surat has forwarded the transactions relating to the assessee to the jurisdictional officer. The jurisdictional officer has reopened the assessment of the assessee u/s 147 of the Act and assessment order u/s 143(3) r.w.s. 147 of the Act has been passed. Subsequently the AO has conveyed the information regarding unaccounted loan transactions of the appellant to the jurisdictional JCIT being the competent authority for levying penalty u/s 271D of the Act. Thereafter, the JCIT Range 3(2) Surat has levied penalty u/s 271D of the Act for violation of provisions of Section 269SS of the Act. The events post detection of the unaccounted transactions during the course of search action in the case of M/s Creative Trendz Pvt Ltd have been elaborated which justifies the time lapse subsequent to the alleged date of transaction. Therefore, there is no merit in the argument of the assessee.

8.2.10. Considering the detailed facts narrated in the previous paragraphs, it is clear that the appellant has accepted loan in contravention of provisions of Section 26SS of the Act and he shall be liable to pay, by way of penalty, a sum equal to the amount of loan so taken or accepted. In this case the quantum of loan accepted in contravention of provisions of Section 269SS is Rs.59,00,000/-, Therefore, the JCIT Range 3(2) Surat's order levying a penalty of Rs.59,00,000/- u/s 271D of the Act is justified and hence confirmed. The grounds of appeal of the appellant are dismissed.”

5. Aggrieved against the appellate orders, assessee is in appeals before us raising the following Ground of Appeal:

ITA No. 709/SRT/2025

1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Joint Commissioner of Income Tax in passing the penalty order u/s. 271D after limitation period.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of the Joint Commissioner of Income Tax in levying penalty of Rs. 59,00,000/-u/s. 271D of the I.T. Act, 1961.

3. *It is therefore prayed that the above penalty levied by the Joint Commissioner of income Tax and confirmed by learned CIT(A) may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

ITA No. 710/SRT/2025

1. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Joint Commissioner of Income Tax in passing the penalty order u/s. 271E after limitation period.*

2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of the Joint Commissioner of Income Tax in levying penalty of Rs. 59,00,000/- u/s. 271E of the I.T. Act, 1961.*

3. *It is therefore prayed that the above penalty levied by the Joint Commissioner of Income Tax and confirmed by learned CIT(A) may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.*

5.1. In support of the Grounds of Appeal raised by the assessee, Ld. Counsel Mr. Rasesh Shah appearing for the assessee submitted that the penalty orders are passed after the limitation period. Therefore requested to delete the penalties levied on the point of limitation and relied upon the following case laws:

1. CIT v. Hissaria Brothers [2016] 74 taxmann.com 22 (SC)
2. CIT v. Jai Laxmi Rice Mills Ambala City [2015] 64 taxmann.com 75 (SC)
3. PCIT vs. Thapar Homes Ltd. [2024] 159 taxmann.com 450 (Delhi HC)
4. CIT v. Narayani & Sons (P) Ltd [2016] 73 taxmann.com 21 (Cal. HC)
5. Shri Devang Ajit Jhaveri vs. JCIT, ITA No. 3509/Mum/2024 (Mum. Trib.)

5.2. On merits of the case also Ld. Counsel appearing for the assessee submitted that similar transactions carried out by the M/s. Creative Trendz Pvt. Ltd. with the other parties, wherein the Co-ordinate Bench of this Tribunal deleted the penalties levied u/s. 271D and 271E of the Act in the case of ITO -Vs- Nareshbhai Arajnabhai Devani in ITA No. 467/SRT/2019 dated 15-07-2024. Similarly Co-ordinate Bench of this Tribunal in the case of DCIT Vs. Shri Garuangbhai P. Upadhyay in ITA Nos. 208 to 216/ SRT/ 2017 vide decision dated 12-07-2019 deleted the penalty levied u/s. 271D and 271E of the Act. Thus Ld. Counsel Mr. Rasesh Shah pleaded the penalties levied by the Joint Commissioner u/s. 271D and 271E are liable to be deleted.

6. Per contra, Ld. Sr. D.R. Shri Ajay Uke appearing for the Revenue supported the orders passed by the lower authorities and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record. In the assessment order dated 08.12.2016, the AO at Para No. 5 observed as under:

"As seen from the ledger as discussed above, it is seen that the assessee has accepted and repaid the loan in cash in excess of Rs. 20,000/- violating the provisions of section 269SS and 269T and penal provisions u/s. 271D and 271E of the I.T. Act is attracted in the case of the assessee The same is being proposed in later stage."

7.1. For better understanding the provisions of section 275 [1][c] of the Act is reproduced as follows:

275. Bar of limitation for imposing penalties.

[1] No order imposing a penalty under this Chapter shall be passed

[a] ...

[b] ...

[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**.

7.2. Applying the provisions of Section 275[1][c] there are two time limits envisaged, (i) before the expiry of financial year in the course of proceedings in which action for the imposition of penalty has been initiated; or (ii) time limit six months from the end of the month in which action for imposition of penalty is initiated (i.e. 23-01-2018). In both the scenario, the first time limit has expired in this case on 31-03-2017 and the second time limit namely six months expired on 31-07-2018, whereas the penalty orders were passed on 28-09-2018. Therefore, the penalty orders passed by the Joint Commissioner of Income Tax are clearly time barred and against the provisions of section 275 [1][c] of the Act. The case laws relied by the assessee are clearly applicable to the facts of the present case.

8. So far as the merits of penalty is concerned, it is submitted that on similar set of facts, the penalties were levied by the AO in the following cases on the basis of the same materials collected in case of M/s. Creative Trendz Pvt. Ltd. and Shri Piyus G. Modi,

which were ultimately deleted by the Co-ordinate Bench in the case of Nareshbhai Arajnabhai Devani [cited supra] as follows:

“... 7. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We find that the case of assessee was reopened under Section 147 of the Act on the basis of information that a search action was carried out on Creative Trendz Pvt. Ltd. wherein Piyush G Modi and Dilip C Sojitra was also covered. On the basis of certain incriminating material regarding payment of cash loan, the case of assessee was reopened. However, in assessment order, no addition on account of alleged cash loan was made. The Assessing Officer only made addition of interest expenses of Rs. 2,84,460/-. We find that against the addition of alleged interest payment, the assessee filed appeal before the Id. CIT(A) wherein the entire addition of alleged interest payment was deleted by order dated 05/07/2019. We further find that the Assessing Officer while passing the assessment order, made reference to Addl.CIT for levy of penalty under Section 271D of the Act for violation of Section 26955 of the Act on account of receipt of cash loan, The Assessing Officer/Addl.CIT on receipt of reference, levied penalty of Rs. 68.00 lacs by taking view that from the documents seized during the search action, it is evident that the assessee has made transaction of cash loan and repayment in cash in contravention of Section 26955 and 269D of the Act and levied penalty of Rs. 68.00 lacs. The Id. CIT(A) deleted the entire penalty by holding that the seized material was recovered from the third party. Statement of those persons who were searched, nowhere indicates the name of assessee. **The Assessing Officer has not established that the assessee has availed of loan in cash. The searched persons were frequently changing their stand.** We find that documents recovered from the third party required substantive corroborative evidence, which is not available in this case. The benefit of presumption under Section 132(4A) of the Act and Section 292C is not available to the Assessing Officer in the present case.

8. On independent consideration of facts, **we find that there is no reliable or corroborative evidence to prove the fact that the assessee has availed cash loan or made cash repayment to Dilip C**

Sojitra. Neither Dilip C Sojitra has taken the name of assessee nor any independent or corroborative evidence is available on record.

We find that on similar set of facts, similar penalty was levied in case of Shri Gaurangbhai P Upadhayay which was deleted by the Id. CIT(A) and on further appeal, the order of Id. CIT(A) was upheld in ITA No. 208 to 216/Srt/2017 dated 12/07/2019. The Assessing Officer while levying penalty, simply held that the assessee failed to prove that default was for a reasonable cause and failed to appreciate that when the stand of assessee was that he has not availed such loan, the Assessing Officer was first require to show direct nexus by bringing cogent material on record to prove the fact about the acceptance of loan in cash. Thus, in view of the aforesaid additional observation, we affirm the order of Id.CIT(A). In the result, grounds of appeal raised by the revenue are dismissed.

9. In the result, this appeal of revenue is dismissed.”

8.1. In the case of DCIT vs. Shri Gaurangbhal P. Upadhyay [ITA No. 208/Srt/2017 (Surat Trib) wherein it is held as follows:

“.. 8. We have heard the rival submissions and perused the material available on record, We have also gone through the assessment order and penalty order in the assessment years under consideration. It is observed that the addition of interest payment u/s.69C was made on account of documents seized from third party which were reflected some cash loans transactions i.e. receipts and payments. However, these documents were not found from the possession of the assessee. Therefore, presumption u/s.132 (4A) as well as u/s.292C is not available in the case of the assessee. Further, the statement on which the Assessing Officer has based his findings has not been found to be acceptable due to changing stand of the parties concern which are also third party. Further, the transactions were not found to be true as these were not deciphered by the persons from whose possession these were recovered. **Therefore, the charge of the Assessing Officer that loans were rightly taken and repaid in cash has not been established. The Ld.CIT(A) has given this clear-cut findings in quantum appeal in the case of**

assessee against which the appeal is also dismissed at the level of ITAT. Hence, Ld.CIT(A)'s order has attained finality in the quantum proceedings. Therefore, just because the assessee has business relations with a persons (not even the person from whom the documents were recovered) nor it is proved that unsubstantiated entry found recorded in the similar name is true and belongs to the assessee. We are therefore inclined to agree with the findings recorded by the Ld.CIT(A) in penalty proceedings that no corroborative or substantive evidence has been brought on record to suggest that the assessee has taken any loan in cash or repaid any loan in cash and done the transactions reflected in the seized material recovered from third party. Therefore, considering the totality of the facts, we find no reason to deviate from findings recorded by the Ld.CIT(A). Accordingly the appeal of the Revenue in respect of penalty u/s.271D and 271E is dismissed. Consequently, all the grounds of appeal of the Revenue as reproduced above are dismissed.”

9. Respectfully following the above judicial precedents and the time chart discussed above, the penalty orders passed u/s. 271D and 271E of the Act are hereby quashed as being time barred. Thus the Additional Ground raised by the assessee is hereby allowed and the remaining Grounds become academic and does not require separate adjudication.

10. In the result the appeals filed by the assessee are hereby allowed.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 25-11-2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad :
Dated 25/11/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
सूरत