IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A. No.6482/Mum/2025
A.Y: 2020-21

Likhmaram 317, Prasad Chamber, Opera House, Charni Road, Mumbai - 400004 **PAN – ASEPD9534A**	Vs	ITO, Ward 19(1)(5) Piramal Chambers, Dr. SS Rao Marg, Parel Mumbai - 400012
(Appellant)		**(Respondent)**

Assessee by	Shri Bharat Kumar
Revenue by	Shri Surendra Mohan, Sr. DR

Date of Hearing	09.12.2025
Date of Pronouncement	18.12.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 09.10.2025 passed by National Faceless Appeal Centre, Delhi (NFAC) / CIT(A).The assessee has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the levy of penalty of Rs. 8,99,500/- under section 271D of the Income-tax Act, 1961, despite there being no assessment order passed by the Assessing Officer, and without appreciating that in the absence of a valid assessment order, the penalty proceedings were without jurisdiction and bad in law.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the Assessing Officer in levying penalty of Rs. 8,99,500/- under section 271D of the Income-tax Act, 1961

3 On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in not granting due credit of tax from the date of seizure. Alternatively, the credit of the penalty amount paid ought to have been allowed from the commencement of the assessment year 2020-21, i.e., 01.04.2020

4. The Assessee reserves his right to amend modify delete and make any additional grounds of appeal.

2. Ground No. 1 & 2 raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in upholding the levy of penalty of Rs. 8,99,500/- u/s 271D of the Act. Therefore we have decided to adjudicate these grounds through the present consolidated order.

3. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that during the proceedings consequent to "Election Expenditure Monitoring" information, the assessee was found in possession of cash of Rs. 8,99,500/- which was seized and the assessee could not substantiate the source, stating that he was *"unable to recollect the name of parties from*

whom the cash of Rs. 8,99,500/- has been received" and did not maintain books of accounts for his imitation jewellery business.

4. Consequently as the assessee was found contravening the provisions of Sec. 269SS of the Act hence order of penalty u/s 271D of the Act was passed. Which was also upheld by Ld. CIT(A).

5. After having heard the counsels for both the parties at length and after going through the records, we found that there is no dispute as to the fact that assessee had not filed any return of income for the year under consideration. The penalty u/s 271D of the Act has been levied on 27.05.2025 which is approximately after four years from the end of the assessment year under consideration. The limitation for the penalty levied under chapter XXI has been provided in section 275 of the Act which reads as under:

> *"275. Bar of limitation for imposing penalties*
>
> *(1)2] No order imposing a penalty under this Chapter shall be passed-*
>
> *(a)3 in a case where the relevant assessment or other order is the subject- matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 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 Deputy Commissioner (Appeals) or) the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief 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 Commissioner (Appeals) under section 246 or section 246A, and 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 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, 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.]

(IA) In a case where the relevant assessment or other order is the subject- matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner

or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264: Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed-

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "[Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed; Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section]

2. The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989 12 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.]]"

6. The limitation for passing the order imposing penalty under chapter- XXI has been provided by considering all

possible situation where the assessment order or other order is subject matter of appeal of the order is revised under section 263 or assessment order or other orders are subject matter of appeal before the Hon'ble High Court or Hon'ble Supreme Court. Thus, it is clear that section 275, ***pre supposes*** the existence of assessment proceedings / revision proceedings or appeal proceedings arising from the assessment order or revision order and the limitation is provided as per outcome of these proceedings. In absence of assessment in the case of the assessee the initiation of penalty is not valid and further when the satisfaction for initiation of the penalty on the part of the AO is absent in the case of the assessee then the penalty levied u/s 271D is not valid. The Hon'ble Supreme Court in case of ***CIT vs. Jain Laxmi Rice Mills (supra)*** has held as under:

> *"The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding Under Sec. 271E would also not survive. This, according to us, is the correct proposition of law stated by the High Court in the impugned order.*
>
> *As pointed out above, insofar as, fresh assessment order is concerned there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, Insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied."*

7. Thus, the Hon'ble Supreme Court has affirmed the view of the Hon'ble High Court that in absence of satisfaction recorded regarding the penalty proceedings u/s 271E of the Act the order of levy of penalty is not valid. The Ahmadabad Bench of the Tribunal in case of ***Vijayaben G. Zalavadia vs. JCIT (supra)*** has considered an identical issue as under:

> *"6. We have heard the respective parties and also perused the relevant materials available on record.*
>
> *7. We find that on the identical set of facts the Punjab and Haryana High Court was pleased observe the following while upholding quashing of penalty by the Tribunal:*
>
> *"3. We have heard learned counsel for the appellant.*
>
> *4. The only point for consideration in this appeal is whether the assessee had contravened the provisions of Section 269T of the Act by making repayment of loan/deposits of Smt. Kusum Lata Thakral, through account payee cheque or account payee drafts to M/s. Babyloan Builders Pvt. Ltd., Gurgaon and, therefore, penalty under Section 271E was leviable.*
>
> *5. The Assessing Officer had levied the penalty amounting to Rs. 11,02,6107- which has been deleted by the Tribunal. The Tribunal while deleting the penalty recorded that the return of the assessee was processed as on 31.12.2003 and the notice u/s. 274 read with section 271E of the Act was issued on 12.06.2007. Such notice was issued when there was no proceedings pending before the Assessing in further observed that action for penalty may be permissible only after Brands Ltd. [20061 285 ITR 295/155 Taxman 383, the Tribunal regular assessment has been framed and since no regular assessment order had been passed in this case, the recourse to penalty proceedings under Section 27IE were not justified. The findings recorded by the Tribunal read thus:-*

"Having heard the parties and having perused the material on record, we find the grievance of the assessee to be correct. In this case, the Act, on 31.12.2003. Notice u/s. 274 read with 271E of the Act was return of the assessee was processed u/s. 143(1)(a) of the Income-tax issued to the assessee on 12.06.2007. It being a case of processing the return of income, there is no finding in the AO's order with regard to the applicability or otherwise of section 269T of the IT Act to the assessee's case. It was within the purview of the AO to bring the assessee's case to scrutiny and to make regular assessment u/s. 143(3) of the Act. It was also within the power of the AO at the appropriate stage to initiate proceedings u/s. 147 of the Act against the assessee. No such action was taken. Rather, the penalty was imposed on the basis of the finding in the case of assessee's wife."

6. No error or perversity could be shown in the aforesaid findings recorded by the Tribunal. Moreover, the assessee had taken a plea before the Assessing Officer that there was a reasonable cause for the assessee to have made direct payment of Rs. 14,02,600/- to M/s. Babyloan Builders Private Ltd., Gurgaon. It was pleaded that some of the repayments made by the assessee were inter company transfer for group housing and purchase of flat and at times payments were made after closure of banking hours. It was further submitted that the payments made were genuine and no tax evasion was involved and the default, if any, was of technical nature. The explanation being plausible one, it cannot be said that there was no reasonable cause within the meaning of Section 273B of the Act. No substantial question of law arises in this appeal.

8. We find substances in the submissions made by the Ld. A.R. particularly after considering the order passed by the Hon'ble Punjab and Haryana High Court as cited hereinabove. In fact, on the identical set of facts the penalty under Section 271E was deleted by the Tribunal and further upheld by the Hon'ble High Court. 9. Having regard to the facts and circumstances of the case and the ratio laid down in the order passed by the Punjab and Haryana High Court we do not hesitate to hold that the impugned penalty under Section 271E is not permissible in the absence of regular assessment framed against the assessee by the Revenue. Hence, the same

is not found to be sustainable in the eye of law and, thus, quashed. The appeal preferred by the assessee is, therefore, allowed."

8. Therefore, we are of the considered view that it is pre-requisite condition that for initiation of penalty u/s 271D/271E of the Act, there must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee. Accordingly in the facts and circumstances of the case and following the judgment of Hon'ble Supreme Court as well as Coordinate Bench of the Tribunal in case ***of Vijayaben G. Zalavadia vs. JCIT (supra)***, we hold that the penalty levied u/s 271D of the Act without any assessment proceedings in the case of the assessee is not valid and liable to be quashed.

9. The similar issue has also been decided by the Coordinate bench of ITAT in the case of ***Umakant Sharma Vs. ITO in ITA No. 364 to 366/Ind/2022***, therefore considering the totality of the facts and circumstances and also keeping in view the decision of the ***Umakant Sharma (supra)*** we quash the penalty levied u/s 271D of the Act and order accordingly.

10. Ground No. 3, this ground raised by the assessee is premature and has not been even raised before any of the authorities below. Since this ground has been raised

without even moving an application for seeking permission, therefore the same stands dismissed as not maintainable. Accordingly this ground raised by the assessee stands dismissed.

11. In the result the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 18/12/2025 .

Sd/-	Sd/-
(PRABHASH SHANKAR	**(SANDEEP GOSAIN)**
(ACCOUNTATN MEMBER)	**(JUDICIAL MEMBER)**

Mumbai:

Dated: 18/12/2025

KRK, Sr. PS.

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

(Asstt. Registrar)
ITAT, Mumbai