

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA No.3593/Del/2025, A.Y. 2020-21

ATMA RAM BUILDERS PRIVATE LIMITED, NEW DELHI 8, ATMA RAM MANSION (SCINDIA HOUSE), K.G. MARG, CONAUGHT PLACE, NEW DELHI PAN: AAACA0519M	Vs.	Income Tax Officer, Central Circle-5, New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Ranjan Chopra, ms. Ank
Respondent by	Ms. Ankush Kalra, Sr.DR

Date of Hearing	10/12/2025
Date of Pronouncement	16/01/2026

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is directed against the order dated 27.03.25 of PCIT (Central), Delhi-1 under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') wherein assessment order dated

31.08.2022 was revised with the direction to the Assessing Officer ('AO') to take appropriate action or initiation of penalty proceeding under section 271E of the Act for levy of penalty amounting to Rs. 11,00,000/- for A.Y. 2020-21 for violation of provision of Section 269T of the Act.

- 2.** The facts in brief as culled out from the order of the authorities below are that the appellant/assessee is into retail trade of textiles, apparel, footwear and leather and is running two separate showrooms at Delhi. The assessee filed his return of income for AY 2020-21 on 13th February, 2021 admitting an income of Rs.13,53,93,940/-. The case of the assessee was selected for scrutiny vide CASS under complete scrutiny category for the following reasons as enumerated in para 3 as extracted below: -

“3. Complete description of issues (issue wise)

The assessee's case was selected for scrutiny for the following reasons:

1. Large value receipt or repayment of loans other than through banking channels

2. As per New Schedule AL-1, the company has invested substantial part of its funds in assets like Residential House, Land or Building, Capital Contribution to other entities, Loans and Advances, Motor Vehicles, Aircrafts etc.

3. Deduction from Total Income (Chapter VI-A) (Business ITR)”

- 3.** The assessee was asked to furnish various details item wise as under: -

“1. Donation u/s 80G-Rs. 54,90,452/-

2. *Non-Current investments: Rs. 59,53,24,036/-*
3. *Cash Deposits: Rs. 3,97,06,452/-*
4. *Purchases: Rs. 4,04,91,936/-*
5. *Rental Income: Rs.8,86,14,791/-*
6. *Sales of service: Rs.9,66,05,036/-*
7. *Aggregate other Income: Rs. 7,13,90,455/-etc.,*

4. The assessee furnished submissions on various dates to the show cause notice during complete scrutiny assessment. With respect to the cash deposits, it was stated that the assessee has made cash deposits of Rs. 3,97,06,452/- in HDFC Bank Ltd. The source of cash deposits amounting to Rs. 3,95,56,047/- was only explained and the source of balance amount of Rs. 1,50,405/- was not explained.
5. Regarding the interest expenses, it was explained that the assessee has claimed interest expense of Rs. 44,43,821/- which according to the assessee are mainly due to OD limit exceeding charges and bank charges due to credit card sales. It was also explained that apart from the bank interest, it has claimed interest expenses paid to M/s. Atma Ram Trust to the extent of Rs. 10,48,480/- and also stated 'copy of voucher attached'. According to the Assessing Officer ('AO'), the assessee has not explained satisfactorily with the supporting documents about the interest expenses claimed as well as the cash deposit unexplained amount of Rs. 1,50,405/-. The AO therefore, proposed the

variations unexplained cash credit of Rs. 1,50,405/- and disallowance of interest expenses of Rs. 10,48,480/- and total variations proposed was Rs. 11,98,885/-. With respect to the disputed balance cash deposit of Rs. 1,50,405/-, the assessee has not explained the said balance amount and has not filed reconciliation statement. Hence, accordingly treated as unexplained money u/s 69A of the Act. With regard to the interest expenses paid to M/s. Atma Ram Trust to the extent of Rs. 10,48,480/-. According to the AO, the assessee has not explained satisfactorily with supporting documents in respect of those interest expenses claimed in respect to M/s. Atma Ram Trust amounting to Rs. 10,48,480/-. The said interest expense is accordingly disallowed for want of evidence and penalty proceedings were also initiated under section 270A of the Act for misreporting. Thus, the assessment order was passed making addition of Rs. 11,98,885/-. The total income was determined Rs. 13,65,92,825/- in the assessment u/s 143(3) r.w.s. 144B of the Act.

6. The assessment record in this case was examined by the Ld. PCIT, and it was noticed that the 'Tax Audit Report' in Form 3CD, column 31(c), the assessee has made repayment of loan or deposit of Rs. 11,00,000/- to M/s. Basic Clothing Pvt. Ltd. As per said report, these repayments were made otherwise than account payee cheque, bank draft or use of

electronic clearing system through a bank account. Thus, the above transaction violates the 'Modes of repayment of certain loans or deposits as prescribed u/s. 269T of the Act. The Ld. PCIT was of the opinion that violation of provisions of section 269T of the Act attracts penalty provision of section 271E of the Act. The said penalty was neither initiated nor imposed during the assessment proceeding and thus, said omission resulted into non-levy of penalty of Rs. 11,00,000/- u/s 271E of the Act. Hence, the Ld. PCIT was of the opinion that the assessment u/s 143(3) r.w.s. 144B vide assessment order dated 31.08.2022 appeared to be erroneous as well as prejudicial to the interest of revenue and accordingly, issued a show cause notice u/s 263 of the Act.

7. In reply to the show cause notice, the assessee submitted that Rs. 11,00,000/- is an adjustment of Security Deposit out of total deposit of Rs. 1 crore received during A.Y. 2018-19 towards minimum guarantee amount receivable from Basic Clothing Pvt. Ltd. The said amount of Rs. 1 Crore was appearing under the head security deposit in Audited Financials and same was not a loan transaction. The part adjustment of Rs. 11 lacs towards the amount receivable is wrongly classified as repayment of loan. It was further stated the adjustment made of Rs. 11

lacs mentioned by the Auditor in Tax Audit Report as amount of repayment other than by way of account payee cheque/RTGS. It was further stated that the said adjustments shown in the tax audit report as has not constituted a default within the meaning of Section 269T and it was a mere book entry which cannot be entailed a default of taking/repaying the loan in cash as it was not established that money moved from one person to another person. It was further stated that the transaction of adjusting minimum guarantee amount with security deposit is genuine and Section 269T was not applicable to the assessee. It was also submitted that the directions given for initiating penalty proceeding under section 271E of the Act were contrary to the provision of law and beyond the scope of power of the Ld. PCIT. After considering the submission made by the assessee Ld. PCIT was not convinced on both the grounds raised by the assessee in reply to the show cause notice and has passed the impugned order extracted below as under: -

"8. Findings:

8.1. I have gone through the assessment record and submissions of the assessee. The issue involved in the present case is that as per the 'Tax Audit Report' in Form 3CD, in Column 31(c) (particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year), the auditor had specified that the assessee has made repayment of loan or deposit of Rs. 11,00,000/- to M/s. Basic Clothing Pvt. Ltd. In other words, auditor in

the audit report in Form 3CD has specified that the repayments of loan or deposit to the tune of Rs. 11,00,000/- were made otherwise than by account payee cheque, bank draft or use of electronic clearing system through a bank account. In this manner, the said transaction amounting to Rs. 11,00,000/- violates the permitted modes of repayment of certain loans or deposits, as prescribed u/s 269T of the I. T. Act. Further, violation of provisions of Section 269T of the I.T. Act attracts penalty provisions u/s 271E of the Act. However, AO failed to take necessary action in accordance with the provisions of Section 271E of the Act, as the said penalty proceedings were not initiated by AO during the assessment proceedings, leading to potential revenue loss (equal to loan amount i.e.Rs.11,00,000/-). In other words, the assessment order passed by AO was found erroneous in so far as it was found to be prejudicial to the interest of revenue. Accordingly in the present proceedings u/s 263 of the Act, the assessee was asked to explain why the assessment order passed by AO should not be held as erroneous in so far as it is observed to be prejudicial to the interest of revenue, in as much as AO, during the assessment proceedings, has failed to initiate penalty proceedings u/s 271E of the Act.

The first contention of the assessee in its written submission is that in the instant case, there is no violation of provisions of Section 269T of the Act as the amount of Rs 11,00,000/-, mentioned by the Auditor in Tax Audit Report as amount of repayment of loan or deposit other than by way of account payee cheque/RTGS, is in reality just an adjustment of Security Deposit out of total deposit of Rs. 1 Crore received from Basic Clothing Pvt Ltd. during AY 2018-19, towards the minimum guarantee amount. The assessee has further stated that the above amount of Rs. 1 Crore is appearing under the head security deposit in Audited Financials and same is not a loan transaction, and has claimed the part adjustment of Rs. 11 Lacs towards the amount receivable is wrongly classified by the auditor in the tax audit report as repayment of loan. On the basis of said claim, the assessee has argued that the very essential ingredient to constitute a default within the meaning of Section 269SS or 269T is that whether there is movement of "money" i.e. currency/cash, that mere book entry cannot entail a default of taking/re-paying the loan in cash unless it is established that moneys moved from one person to another person, which is in the nature of loans or deposits, that the transaction of adjusting minimum guarantee amount with security deposit is genuine and accordingly the

purpose for which the enactment of section 269SS and 269T was introduced has no application to the assessee's case, that mere book entry does not result in any loss of revenue and should not invite harsh penalty u/s 271E of the I T Act, and that the transaction entered was attributable to exigency of business carried on by the assessee which constitute a 'reasonable cause' as contemplated under section 273B of the Act.

I have considered above submission of the assessee. The issue involved in the present case is that as per the 'Tax Audit Report' in Form 3CD, in Column 31(c) (particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year), the auditor had specified that the assessee has made repayment of loan or deposit of Rs. 11,00,000/- to M/s. Basic Clothing Pvt. Ltd. In other words, auditor in the audit report in Form 3CD has clearly specified that the repayments of loan or deposit to the tune of Rs.11,00,000/-were made otherwise than by account payee cheque, bank draft or use of electronic clearing system through a bank account. In this manner, the said transaction amounting to Rs. 11,00,000/-violates the permitted modes of repayment of certain loans or deposits, as prescribed u/s 269T of the I. T. Act. Further, violation of provisions of Section 269T of the I.T. Act attracts penalty provisions u/s 271E of the Act. The various submissions made by the assessee that the said amount is just an adjustment entry and that auditor has incorrectly reported the said sum in the audit report as the repayment of loan and deposit made in violation of Section 269T of the Act, are not acceptable on merit. If the said reporting by the tax auditor was incorrect, the assessee had sufficient time at its disposal to obtain a certificate from the tax auditor stating that incorrect reporting has occurred in the tax audit report or the assessee could even make attempt to obtain a revised tax audit report. The tax audit reports are prepared by the tax auditors after going through voluminous records submitted by the assessee itself before the tax auditor. The reporting made by the tax auditors in such statutory tax audit reports cannot be taken casually as it is a specialised task. Any incorrect reporting in such reports must be got corrected using a formal route. At this stage, it is very difficult to examine the claims made by the assessee that the said sum Rs. 11,00,000/-was just an adjustment entry, and it did not involve any violation of the provisions of Section 269T of the I. T. Act.

In view of the above, placing complete reliance on the tax audit report in Form 3CD and the reporting made therein by the tax auditor, it is concluded that in this case the provisions of Section 269T of the I. T. Act were violated and therefore the penalty provisions u/s 271E of the Act were clearly attracted. Consequently, the AO's action of not initiating the penalty proceedings u/s 271E of the Act during the course of assessment proceedings, has resulted in passing of an erroneous assessment order by AO, in so far as it has been found to be prejudicial to the interest of revenue.

The second contention of the assessee is that in proceedings u/s 263 of I.T. Act, the Commissioner cannot direct the AO to initiate penalty proceedings if he finds that the AO has not initiated penalty proceedings. Reliance was placed upon judgement of Hon'ble Delhi High Court in the case of CIT Vs. Nihal Chand Rekyan (supra).

This contention of the assessee is not acceptable. The decision relied upon by the assessee of Hon'ble Delhi High Court in the case of CIT Vs. Nihal Chand Rekyan pertains to initiation of penalty proceedings u/s 271(1)(c) of I.T. Act where it is mandatory to record satisfaction with regard to these proceedings in the assessment order. On the other hand, penalty proceedings u/s 271E of I.T. Act for violation of provisions of section 269T of I.T. Act can be initiated separately for such violations. Hence, decisions relied upon by the assessee in this regard are distinguishable.

On the issue, whether the AO was mandatorily required to initiate the penalty proceedings u/s 271E during the course of assessment proceedings itself, Hon'ble ITAT Chennai Bench in the case of the DCIT, Central Circle 2(2), Vs. Shri Subramaniam Thanu, in ITA Nos. 785, 786, 787 & 788/Chny/2023 dt. 13.03.2024 has held that the same was mandatorily required. In that case, Hon'ble Bench noted that the penalty proceedings u/s 271(1)(c) of I.T. Act had been duly initiated by AO at the time of passing of assessment order, however the penalty proceedings u/s 271D were not initiated, even though there was violation involved of provisions of section 269SS of the Act. The Hon'ble Bench noted that the Assessing Officer had made a reference to the Addl. CIT to initiate the proceedings under section 271D of the Act for violation of section 269SS of the Act, after the completion of assessment proceedings. The Hon'ble Bench noted

that the action of AO was in violation of CBDT Circular no. 09/DV/2016 dated 26.04.2016 advising Assessing Officer to make a reference to the Range Head regarding violation of provisions of Section 269SS and 269T during the course of assessment proceedings itself. The said judgement was delivered in the context of penal provisions u/s 271D of the Act, on account of violation of provisions of Section 269SS of the Act. The relevant part of the judgement, being para 11.6 of the judgement is reproduced as under:

"11.6 We have considered the judicial pronouncements and principles laid down by the Hon'ble Supreme Court and also the judgement of various Hon'ble High Courts and as per the above judicial pronouncements, the Assessing Officer has to record his satisfaction before initiating penalty under section 271D of the Act in respect of violation of the provisions of section 269SS of the Act. In this case, the assessment order was passed on 30.12.2017 and reference was made by the Assessing Officer to the Addl. CIT on 14.03.2021 to initiate penalty proceedings. There is a time gap of more than three years In the assessment order dated 30.12.2017, the Assessing Officer has noted that penalty proceedings under section 271(1)(c) of the Act has to be initiated separately. However, the Assessing Officer has made a reference to the Addl. CIT to initiate the proceedings under section 271D of the Act for violation of section 269SS of the Act. Once the Assessing Officer decided to initiate penalty under section 271(1)(c) of the Act, subsequently, reference was made to Addl. CIT to initiate penalty proceedings under section 271D of the Act, the Assessing Officer ought to have been recorded his satisfaction. However, Ld. AO has failed to do so. The same is in violation of CBDT Circular no. 09/DV/2016 dated 26.04.2016 advising Assessing Officer to make a reference to the Range Head regarding violation of provisions of Sec.269SS and 269T during the course of assessment proceedings itself. Thus, the action of Ld. AO was in gross violation of departmental circular. By considering the above facts and circumstances of the case and respectfully following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra), the judgement of the Hon'ble Telangana High Court in the case of Srinivasa Reddy

Reddeppagari v. JCIT (supra), the decisions of Chennai Benches of ITAT in the case of T. Shiju v. JCIT (supra), in the case of Smt. S.B. Patil v. JCIT (supra), the decision of the Delhi Benches of ITAT in the case of Anglican India Consultancy Pvt. Ltd. v. Addl. CIT (supra), the ground raised by the Department is liable to be dismissed.”

Perusal of the assessment order shows that in the instant case, the AO at the time of passing assessment order initiated proceedings u/s 270A of the Act. Since the penalty provisions u/s 271(1)(c) of the Act were equivalently replaced by provisions of Section 270A of the Act, the said judgement delivered by Hon'ble ITAT Chennai Bench in the case of The DCIT , Central Circle 2(2), Vs. Shri Subramaniam Thanu is squarely applicable to the case of assessee since Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills Ambala City (supra) has already clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act.

In view of the discussion in the foregoing paragraphs, the assessment order completed in this case u/s 143(3)/144B of the I. T. Act, 1961 for A.Y. 2020-21 on 31.08.2022 is held to be erroneous, in so far as it is prejudicial to the interest of revenue under the ambit of the provisions of section 263 of the I. T. Act, 1961.

9. The Assessing Officer is directed to revise order u/s 143(3)/144B of the I.T. Act, 1961 dated 31.08.2022 in this case as held in this order and take appropriate action for initiation of penalty proceedings u/s 271E of the I. T. Act for levy of penalty amounting of Rs. 11,00,000 for A.Y. 2020-21, for violation of provisions of Section 269T of the Act.”

8. Aggrieved by the impugned order, the assessee has filed the present appeal and has raised following grounds of appeal: -

"1. That the learned Pr. CIT has erred in law & on facts in assuming jurisdiction under Section 263 of the Act without satisfying the mandatory conditions that the original assessment order was erroneous & prejudicial to the interest of the revenue.

2. That the directions given by the learned Principal Commissioner of Income Tax (PCIT) to initiate penalty proceedings under section 271E are

contrary to the provisions of law & are beyond the scope of powers vested under section 263 of the Income-tax Act, 1961. The power under section 263 is limited to revising erroneous & prejudicial order, & it does not extend to directing initiation of separate penal proceedings under a different provision without satisfaction recorded by the Assessing Officer.

3. That the alleged repayment of loan/deposit in cash of Rs. 11,00,000/- was actually an adjustment entry of Security deposit out of total deposit of Rs.1 Crore received during AY 2018-19 & is not a loan & cash transaction, same was genuine & bonafide, made under exceptional circumstances without any intention to evade tax, & hence does not attract penalty under section 271E, as per settled judicial precedents.

4. That the original order passed by the Assessing Officer did not warrant any interference as the AO, after due inquiry & application of mind, had rightly not initiated penalty proceedings under section 271E for the alleged violation of section 269T.

5. That the provisions of section 269T are not applicable in the facts & circumstances of the appellant's case, & hence the consequential penalty under section 271E is unsustainable in law.

6. That mere book entry cannot entail a default of taking / re-paying the loan in cash unless it is established that moneys moved from one person to another person, which is in the nature of loans / deposit.

7. That the order passed u/s 263 of learned Pr. CIT is against the principles of natural justice.

8. That the appellant reserves the right to add, alter, amend/withdraw any of the above grounds of appeal at/ before the time of hearing."

9. We have heard the Ld. AR for the Assessee and examined the record.

The Ld. AR for the assessee/appellant, at the very outset, submitted that the Ld. PCIT has no power to order initiation of the proceeding u/s 271E of the Act as there was no satisfaction in the assessment order with respect to the initiating the penalty proceeding u/s 271E of the Act. Secondly, in support of this argument, the Ld. AR has relied upon the

case of Hon'ble High Court of Delhi in Nihar Chand Rekyan [2002] 123

Taxman 353(Delhi) where it was held as under:

"At the instance of the Revenue, u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court, in respect of the assessment year 1970-71:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in quashing the direction given by the Commissioner of Income Tax u/s 265 of the Income Tax Act, 1961, to the Income Tax Officer to initiate penalty proceedings u/s 271(1)(a) of the Act, against the assessed for the assessment year 1970-71?"

2. In so far as this court is concerned the issue raised is no longer res integra. The scope of powers of the Commissioner u/s 263 of the Act came up for consideration before this court in Addl Commissioner of Income Tax, Delhi-I Vs. J.K.D'costa, and it was held that even if, while examining the records of an assessment order in exercise of his powers of revision under the said section, the Commissioner finds that the Assessing Officer has not initiated penalty proceedings, he cannot direct initiation of penalty proceedings because penalty proceedings are not a part of assessment proceedings. It was, thus, held that the Commissioner cannot pass an order u/s 263 of the Act pertaining to penalty.

3. Following the said judgment, with which we are in respectful agreement, the question is answered in the affirmative, i.e., in favor of the assessed and against the Revenue.

4. No costs."

10. Ld. AR for assessee has further referred to the case of Hon'ble

Supreme Court in CIT vs. Jai Laxmi Rice Mills Ambala City [2015]

64Taxman.com 75 (SC) where it was held as under: -

"1. In these appeals, we are concerned with the question as to whether penalty proceeding under Section 271D of the Income Tax Act (hereinafter

referred to as “the Act”) is independent of the assessment proceeding and this question arises for consideration in respect of Assessment Years 1991-1992 and 1992-1993 under the following circumstances:

In respect of Assessment Year 1992-1993, assessment order was passed on 26.02.1996 on the basis of CIB information informing the Department that the assessee is engaged in large scale purchase and sale of wheat, but it is not filing income tax return. Ex-parte proceedings were initiated, which resulted in the aforesaid order, as per which net taxable income of the assessee was assessed at Rs. 18,34,584/-. While framing the assessment, the Assessing Officer also observed that the assessee had contravened the provisions of Section 269SS of the Act and because of this the Assessing Officer was satisfied that penalty proceedings under Section 271E of the Act were to be initiated.

2. The assessee carried out this order in appeal. The Commissioner of Income Tax (Appeals) allowed the appeal and set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity to the assessee.

3. After remand, the Assessing Officer passed fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings under Section 271E of the Act was recorded. It so happened that on the basis of the original assessment order dated 26.02.1996, show cause notice was given to the assessee and it resulted in passing the penalty order dated 23.09.1996. Thus, this penalty order was passed before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in this backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of original assessment order and when that assessment order had been set aside, could still survive.

4. 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 Section 271E would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.

5. 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.”

11. The Ld. Sr. DR on the other hand, supported the judgment of Ld. PCIT.

12. We have considered the rival submission and examined the record and the case laws referred to by the parties. The Ld. PCIT has distinguished the case of the Hon'ble Delhi High Court in CIT vs. Nihal Chand Rekyan (supra) by observing as under: -

“The second contention of the assessee is that in proceedings u/s 263 of I.T.Act, the Commissioner cannot direct the AO to initiate penalty proceedings if he finds that the AO has not initiated penalty proceedings. Reliance was placed upon judgement of Hon'ble Delhi High Court in the case of CIT vs. Nihal Chand Rekyan (supra).

This contention of the assessee is not acceptable. The decision relied upon by the assessee of Hon'ble Delhi High Court in the case of CIT Vs. Nihal Chand Rekyan pertains to initiation of penalty proceedings u/s 271(1)(c) of I.T.Act where it is mandatory to record satisfaction with regard to these proceedings in the assessment order. On the other hand, penalty proceedings u/s 271E of I.T.Act for violation of provisions of section 269T of I.T.Act can be initiated separately for such violations. Hence, decisions relied upon by the assessee in this regard are distinguishable.”

13. The Ld. PCIT, while relying on the decision of the ITAT Chennai Bench in DCIT, Central Circle vs. Subramaniam Thanu (ITA No. 785/2023 dated 13.03.2024), held that the AO was mandatorily required to initiate the penalty proceedings u/s 271E of the Act during

the course of assessment proceeding itself and not by making a reference separately. It was further held that initiation of the proceeding u/s 271E of the act in the above referred case were held mandatory by the Bench. Reliance was also placed on the judgment of the Hon'ble Supreme Court in *Jai Laxmi Rice Mills Ambala City (Supra)*, wherein it was stated that the provision of Section 271E are pari materia with the section of 271D of the Act.

14. We have perused the finding appearing in para No. 2 of *Nihal chand Rekyan (supra)*, the Hon'ble High Court of Delhi has not specified its finding regarding to Section 271(1)(a) of the Act, as is observed by the Ld. PCIT while distinguishing the said case with the Hon'ble High Court case in the impugned order and the finding recorded by Hon'ble High Court are with respect to the initiation of penalty proceedings holding that the initiation of penalty proceeding is not a part of assessment proceeding and therefore, when the same are not initiated by the AO, the Commissioner cannot direct the initiation of penalty proceedings in absence of satisfaction. Further, the distinguishing of the Hon'ble Delhi High Court judgment on the issue by the Ld. PCIT is contrary to the finding recorded by the Hon'ble Supreme Court of India in **CIT vs. Jai Laxmi Rice Mills Ambala City (supra)** wherein para no. 5 it was

categorically held that in the absence of satisfaction in the assessment order for initiating penalty u/s 271E of the Act, though, the AO wanted penalty proceeding u/s 271C of the Act, no such penalty could be levied or initiated u/s 271E of the Act in the absence of satisfaction in the assessment order.

15. We further noticed that in the case before us, the ld. PCIT has gone a step further while assuming jurisdiction u/s 263 of the Act and directed for initiation of penalty proceeding u/s 271E of the Act in absence of any satisfaction by the AO which is the requirement of initiating proceeding as held by the Hon'ble Supreme Court of India in Jai Laxmi Rice Mills Ambala City (supra). For the above reasons, we are of the considered opinion that the impugned order is not sustainable and is accordingly set aside.

16. In the result, appeal of the Assessee is allowed in above terms.

Order pronounced in open Court on 16th January, 2026.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Dated: 16/01/2026
Binita, Sr. PS

ITA No.3593/Del/2025
Atma Ram Builders Pvt. Ltd.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT/PCIT
4. CIT(Appeals)
5. Sr.DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI