IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B"NEW DELHI

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A No.4679/Del/2025
निर्धारणवर्ष/Assessment Year: 2010-11

DCIT, Central Circle-1, E-2, Block ARA Centre, Jhandewalan Extn., New Delhi.	बनाम **Vs.**	SAHARA INDIA FINANCIAL CORPORATION LTD. 1, Sahara India Bhawan, Kapoorthala Complex, Lucknow, Uttar Pradesh. PAN No.AADCS8698C
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

Assessee by	Shri Ajay Vohra, Sr. Advocate Shri Aditya Vohra, Advocate Shri Arpit Goyal, CA and Ms. Aakriti Bansal, CA
Revenue by	Ms. Pooja Swaroop, CIT DR

सुनवाईकीतारीख/ Date of hearing:	08.01.2026
उद्घोषणाकीतारीख/Pronouncement on	21.01.2026

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter as "the Act"), dated 21.04.2025, passed by Ld. CIT(A), Delhi-23. In this case, a penalty u/s 271D of the Act has been levied at Rs.1735,27,79,257/-.This penalty has been levied for violation u/s 269SS of the Act. It is seen that the assessee's accounts were audited u/s 142(2A) of the Act andit was found that the assessee had received and repaid loans and advances pertaining to various entities otherwise than

through the method specified in section 269SS/269T of the Act. Violations u/s 269SS/269T were worked out at the assessment stage and thereafter the impugned penalty was levied on amounts representing receipt of deposits amounting to Rs.1735,27,79,257/-.

1.1 Before the Ld. CIT(A) the assessee not only challenged the levy of penalty on merits but also raised a ground (ground no.2 in Form 35) alleging that the impugned penalty order was passed by the Additional CIT beyond the statutory time limit prescribed for the same. Apart from this it was also brought to the notice of the Ld. CIT(A) that on similar facts for AY 2007-08 and AY 2008-09 the Hon'ble Delhi High Court had decided the issue in favour of the assessee. In fact, it was also brought to the notice of the Ld. CIT(A) that SLP against the Delhi High Court's orders was also not admitted by the Hon'ble Apex Court.

1.2 It is seen from the impugned order that the Ld. CIT(A) relied on the order of the Hon'ble Delhi High Court in the assessee's own case to grant relief on the entire quantum of the penalty levied in the order.

1.3 The Revenue is aggrieved with this action of Ld. CIT(A) and has approached the ITAT with the following grounds: -

> *"1. That on the facts and in the Circumstances of the case, the Ld. CIT(A) erred in law and on facts in deleting the penalty of Rs. 1735,27,79,257/- levied under Section 271D of the Income Tax Act, 1961, without properly appreciating the scale, gravity, and nature of violations committed by the assessee under Section 269SS.*

2. Whether on the facts and in the circumstances of the. case, the Ld. CIT(A) did not appreciate the distinguishablefactors pointed out in the order u/s 27ID passed by the Addl. CIT Central Range-1, New Delhi, wherein it was already shown that the decision of Hon'ble High Court affirmed by Hon'ble Supreme Court was not applicable on the facts of year under consideration.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating that the prime ground in relied upon orders of Hon'ble High Court and Supreme Court was miniscule proportion of cash deposit ranging from 1.1% to 6.14%, whereas during the year under consideration the cash deposit was substantially high at 37.75% of the total deposit, which cannot be considered insignificant.

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not considering the distinguishable feature in the present order of Hon'ble High Court which was affirmed by the Hon'ble Supreme Court, even though the same was specifically discussed in the penalty order u/s 271D of the Act.

5. That the Ld. CIT(A) failed to consider that the assessee had accepted cash deposits exceeding Rs.20,000 from the public amounting to Rs.1735,27,79,257/- during the year under consideration, which constituted 37.75% of total deposits, in clear contravention of Section 269SS, and without furnishing depositor-wise PAN, address, or confirmation, either during assessment or penalty proceedings."

1.4 During the course of hearing in the matter the assessee has filed an application under Rule 27 of the ITAT Rules, 1963 (hereafter Rule 27). Through this application the ground of appeal no.2 as per Form 35 has been reiterated as an issue which was not adjudicated since the Ld. CIT(A) had deleted the penalty on merit (para 17 of the impugned order). For the sake of reference ground no.2, therein, may be extracted:

"2. That the penalty imposed under section 271D of the Income Tax Act, 1961 by the Ld. Additional Commissioner of Income Tax is belated and the order has been passed beyond the statutory time provided for the same and, therefore, the penalty levied is barred by limitation and is void ab initio and liable to be quashed."

1.5 The Revenue was afforded an opportunity to consider the application and file submissions, if any. The Revenue has filed written submissions opposing the said application. Since the issue raised by the assessee goes to the root of the matter, it is required that the point raised under Rule 27 should be considered before embarking on any exercise to adjudicate on merits.

2. The Ld. AR has filed the application under Rule 27 by relying on the cases of B.R. Bamasi reported in 83 ITR 223 (Bom.) and the case of Sanjay Sawhney reported in 116 taxmann.com 701 (Del). It has been averred that a combined reading of these two case laws shows that the assessee is well within his rights to support a favourable order of the CIT(A) by raising a ground which was also raised before the CIT(A), but was either not adjudicated or was held against the assessee. The Ld. AR read extensively from the two case laws to support his contention that raising of an additional ground through the mechanism of Rule 27 was legally justified at this stage. Thereafter, the Ld. AR took us through the various relevant provisions of the Act and attempted to demonstrate regarding the limitation period for the levy of this penalty: -

Particulars	Date
Assessment order passed u/s 143(3) of the Act	12.05.2023
Reference letter from the Assessing Officer to Addl. CIT	23.11.2023
Show cause notice issued u/s 274 r.w.s. 271D of the Act	30.11.2023
Last date for passing order u/s 271D of the Act [Refer Section 275(1)(c)]	31.03.2024
Order passed u/s 271D of the Act	30.05.2024

Through this chart the Ld. AR pointed out that the proceedings were time barred on the ground that the limitation would be counted from the date of recording of satisfaction by the Ld. AO in the body of the assessment order and since the assessment order is dated 12.05.2023 then as per Section 275(1)(c) of the Act the limitation could either have been 30.11.2023 or 31.03.2024, whichever is later. It was pointed out that since the impugned penalty order was dated 30.05.2024 hence, it was beyond the statutory time limit. For this purpose, the Ld. AR relied on the case of Jai Laxmi Rice Mills Ambala City reported in 379 ITR 521 (SC), for the point that the date of recording of satisfaction by the Ld. AO is the material date on which the initiation of penalty has to be considered. Similar finding was pointing out in the case of Sunil Agrawal reported in 172 taxmann.com 54 (Raj.); the case of Grandhi Shri Venkata Amarendra reported in 167 taxmann.com 352 (AP); and also the case of PCIT vs. Thapar Homes Limited [ITA No.19/2021, order dated 08.09.2023 (Del)]. The Ld. AR also placed on record an order of the Chennai Bench of ITAT in the case of Jaya Priya Company [ITA No.1899/Chny/2025, order dated 30.10.2025] in his support.

2.1 The Ld. DR vehemently opposed the application under Rule 27 and pointed out that the limitation should be considered from the date on which the Addl./JCIT initiated penalty proceedings u/s 271D of the Act. This date was 30.11.2023 and thereafter the order u/s 271D of the Act was passed on 30.05.2024. It was averred that the order was well within

the time prescribed u/s 275(1)(c) of the Act. The Ld. DR also relied on the Hon'ble Kerala High Court's decision in the case of Grihalakshmi Vision reported in 63 taxmann.com 196. The Ld. DR read out para 10 from this order in which it is written that since only the Joint Commissioner could initiate proceedings for levy of penalty u/s 271D of the Act then the limitation had to be decided from the date of such initiation by the Joint Commissioner of Income Tax.An alternative submission was also put forth that Section 275(1)(a) directs that no order imposing a penalty will be passed where the relevant assessment order is the subject matter of an appeal before the appropriate First Appellate Authority or even the Second Appellate Authority. In this section an extended time period is provided which needed to be counted from the date of receipt of First or Second Appellate Order by the appropriate Income Tax Authority. It was the submission that the assessee had raised a specific ground in the quantum matter challenging the initiation of penalty u/s 271D of the Act. It was informed that the matter in quantum was still pending before the Ld. CIT(A) and thus, even otherwise the case could not become time barred if the penalty order was passed on 31.05.2024.

3. We have heard the Ld. AR canvassing the grounds raised through Rule 27 and we have heard the Ld. DR opposing the same andwe have considered the rival submissions and have also gone through the written submissions filed by both the sides and also the case laws relied upon by

both the Ld. AR/DR. At this stage we deem it fit to adjudicate on the issue of under what circumstances the assessee can support the order of the Ld. CIT(A) through the invocation of Rule 27 of the ITAT Rules, 1963. It is clear thatif at the time of hearing the respondent wishes to take up an issue decided against him by the CIT(A), the opportunity is given under Rule 27, which reads as under:

> ***27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."***

It is evident that at the stage of ITAT, both the assessee as well as the department can be the appellant. The ITAT has its own set of Rules, where both the appellant as well as the respondent are given various rights in order to protect their respective interests. An appellant can not only raise all his grievances through grounds of appeal raised by him in the appeal memo but he also has a right to raise additional grounds of appeal, with the leave of the Tribunal.The ITAT Rules extensively provide for the rights of a respondent at many stages. In cases where a party gets a substantial relief by the CIT(A) and prefers not to go in appeal, despite there being certain adverse findings of the CIT(A) against him, then the respondent can file cross objections even after the expiry of limitation period provided for appeals. At this stage we need to discuss the rationale of such a provision. The powers of the Tribunalare the same as those of an appellate court under the Code

of Civil Procedure. The Civil Procedure Code. Order XLI, rule 22, CPC, states:

> *"(I) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal….."*
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> *This factor has been summarized in the case of **New India Life Assurance Co. [1957] 31 ITR 844 (Bom)** in the following manner:*
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> *"The position with regard to the respondent is different; it is not open to him to urge before the court of appeal and get a relief which would adversely affect the appellant. If the respondent wanted to challenge the decision of the trial court, it was open to him to file a cross-appeal or cross-objections. But the very fact that he has not done so shows that he is quite content with the decision given by the trial court. Therefore, under these circumstances, his only right is to support the decision of the trial court. It is true that he may support the decision of the trial court, not only on the grounds contained in the judgment of the trial court, but on any other ground. In appreciating the question that arises before us, one must clearly bear in mind the fundamental difference in the positions of the appellant and the respondent. The appellant is the party who is dissatisfied with the judgment; the respondent is the party who is satisfied with the judgment."*

3.1 The very logic of this Rule may be understood from an extract from the case of **CIT vs. Sundaram & Co. Pvt. Ltd. Reported in 52 ITR 763 (Mad)**, as follows:

> *"13. The reason for such a rule is obvious. If the final outcome of a decision is favourable to a person it would not matter to him how and by what reasoning the decision is arrived at so long as it is not challenged by his adversary. But, if it is attacked he must be in a position to support it on every ground he urged before the deciding authority whether or not it found favour. If he were not given that amount of freedom he would be a victim of wrong reasons. This would be unjust in the extreme. If rule 27 had not been enacted there would still have been scope for invoking the principle underlying that rule in the name of natural justice. The true rule is that an appeal is a continuation of the original proceeding and that rights of parties cannot be defeated by the form of the order but by the actual decision."*

In the case of Sundaram & Co. (supra), the assessment was reopened under section 147 of the Act and certain disallowances were made. The assessee preferred first appeal, challenging both the validity of reopening as well as the merits of the case. The CIT(A) came to the conclusion that the assessee was entitled to some relief in respect of the quantum and so he granted relief partially. However, the reopening was held to be valid. There was a further appeal at the instance of the department. During the hearing of the appeal, the assessee raised the objection before the Tribunal that the proceedings under s.147 were without jurisdiction. On behalf of the Revenue,it was contended before the Tribunal that the assessee was not competent to raise this objection as he had not filed an independent appeal against the adverse findings of the CIT(A). It is in this context that the High Court had to go into the scope of the powers of the Tribunal while dealing with an appeal before it. After referring to the powers of the Tribunal to grant leave to the appellant, to raise additional grounds, the Hon'ble Court interpreted Rule 27 and observed:

> *"Turning to rule 27 which permits the respondent before the Tribunal to support the order of the Appellate Assistant Commissioner on any of the grounds decided against him, it seems to be clear that this is a right conferred upon him. The Tribunal has no discretion to deprive the respondent of the benefit of this rule. It is an enabling provision which the respondent can avail himself of in order to retain the benefit which has accrued to him from the order appealed against."*

It is trite law that the Tribunal may, under Section 254(1) of the Act, pass such orders as it deems fit, though the said decision must be in

respect of the subject matter of the dispute. The critical words in section 254(1) of the Act are that the Tribunal shall pass such orders *"thereon"* as it thinks fit. The said words occurring in section 254(1) of the Act restrict the jurisdiction of the Tribunal to the subject-matter of the appeal. However, what is the subject-matter of an appeal before the ITAT is largely a question of fact. In the case of Sundaram & Co.(supra),the Hon'ble Madras HighCourt had also examined as to what constituted 'subject-matter of an appeal' and held as follows:

> *"The subject-matter is that which the Tribunal or the appellate court is called upon to decide and to adjudicate. The subject-matter cannot be identified with the grounds raised either by the appellant or by the respondent. In the present case the subject-matter of the appeal before the Tribunal was the reduction of tax rebate in respect of Rs.3,54,716. It is impossible to contend that the subject-matter of the appeal lay within a narrower limit and that it was the question whether the Appellate Assistant Commissioner was right in not allowing reduction of rebate on the ground mentioned by him. The assessee had obtained relief before the Appellate Assistant Commissioner to a particular extent. And this was objected to by the department in the appeal before the Tribunal. The applicability of section 34 of the Act was a general question raised by the assessee even before the Appellate Assistant Commissioner. It cannot be said that it became debarred from raising the question over again before the Tribunal because of the fact that it did not choose to file an appeal against other portions of the order of the Assistant Commissioner which was unfavourable to it. The scope of section 34 was a ground which was decided against the assessee before the Appellate Assistant Commissioner and we do not see how the assessee is precluded from relying upon rule 27 and urging that ground before the Tribunal with a view to support only that portion of the Appellate Assistant Commissioner's order which was favourable to it."*

The principle underlying this decision is that the Tribunal has no power to enlarge the scope of the appeal before it by permitting either the appellant or the respondent to urge grounds which would have the effect of destroying the finality of that portion of the order of the original

authority which had not been appealed against by either of the parties. But this does not mean that the respondent should be denied the opportunity of supporting a decision in his favour which has come up on appeal on a ground decided against him by the authority whose decision is challenged.

3.2 In **CIT v. Mahalakshmi Textile Mills Ltd reported in 66 ITR 710 (SC)**, after referring to the corresponding provision in the 1922 Act (section 33 (4) of the Act), the Hon'ble Supreme Court held as follows:

> *"Under sub-section (4) of section 33 of the Indian Income-tax Act, 1922, the Appellate Tribunal is competent to pass such orders on the appeal 'as it thinks fit'. There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions, whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal: If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty, to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him."*

3.3 In **Steel Containers Ltd. v. CIT (1978) 112 ITR 995 (Cal)**, the A.O. disallowed a portion of the remuneration paid to Balmer Lawrie and Co. Ltd. as excessive in terms of section 40(c)(i) of the Act. The ITAT found that section 40(c)(i) of the Act could not apply to the allowance or remuneration paid to Balmer Lawrie and Co. Ltd., it being a corporate entity. The disallowance could not be made under the said section. One of the questions referred to the High Court was, whether it was open to the Tribunal, after finding that section 40(c)(i) of the Act was not

applicable, to sustain the disallowance partially under section 37 of the Act, in the absence of a cross-appeal or cross-objections by the Revenue. Dealing with the rival contentions of the parties, the Hon'ble Court observed as under:

> *"….The Supreme Court observed that under section 33(4) of the Indian Income-tax Act, 1922, which is in similar terms to section 254 of the Income-tax Act, 1961, the Tribunal was competent to pass such orders on appeal as it thinks fit. There was nothing in the Income-tax Act which restricted the Tribunal to the determination of the questions raised before the departmental authority. All questions, whether of law or of fact, which related to the assessment of the assessee might be raised before the Tribunal. If for reasons recorded by the departmental authority in respect of contention raised by the assessee, grant of relief to him on another ground was justified, it would be open to the departmental authority and the Tribunal, and indeed they would be under a duty, to grant that relief. Similarly, if the disallowance of certain expenditure to an assessee was warranted by a certain provision of law where the allowance and disallowance were the subject-matter of the appeal, in our opinion, the Tribunal was competent under section 254 to deal with that question and decide the same in accordance with law…."*

It is very clear that the pleadings of the respondent under Rule 27 cannot be said to be outside the scope of Tribunal on matters to be heard. The Hon'ble Gujarat High Court, in the case of **SunPharmaceuticals Industries Ltd reported in 86 taxmann.com 148 (Gujarat)**, observed as follows:

> *"11. To put the controversy beyond doubt, Rule 27 of the Rules makes it clear that the respondent in appeal before the Tribunal even without filing an appeal can support the order appealed against on any of the grounds decided against him. It can be easily appreciated that all prayers in the appeal may be allowed by the Commissioner (Appeals), however, some of the contentions of the appellant may not have appealed to the Commissioner. When such an order of the Commissioner is at large before the Tribunal, the respondent before the Tribunal would be entitled to defend the order of the Commissioner on all grounds including on grounds held*

against him by the Commissioner without filing an independent appeal or cross-objection."

Similar issue came-up before Division Bench of this Court in case of Dahod Sahakari KharidVechan Sangh Ltd. v. CIT (2006) 282 ITR 321 (Guj) in which the Court observed as under:

"19. In case a party having succeeded before Commissioner (Appeals) opts not to file cross objection even when an appeal has been preferred by the other party, from that it is not possible to infer that the said party has accepted the order or the part thereof which was against the respondent. The Tribunal has, in the present case, unfortunately drawn such an inference which is not supported by the plain language employed by the provision.

20. If the inference drawn by the Tribunal is accepted as a correct proposition, it would render Rule 27 of the Tribunal Rules redundant and nugatory. It is not possible to interpret the provision in such manner. Any interpretation placed on a provision has to be in harmony with the other provisions under the Act or the connected Rules and an interpretation which makes other connected provisions otiose has to be to avoided. Rule 27 of the Tribunal Rules is clear and unambiguous. The right granted to the respondent by the said Rule cannot be taken away by the Tribunal by referring to provisions of Section 253(4) of the Act. The Tribunal was, therefore, in error in holding that the finding recorded by the Commissioner (Appeals) remained unchallenged since the assessee had not filed cross objection."

3.4 Another connected issue deserves to be discussed in the light of locus classics on the subject, also relied upon by the Ld. AR. If a party appeals, he is the one who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has a grievance, he has a right to file a cross-appeal. But, if no such thing is done, he is deemed to be satisfied with the decision. He is, therefore, entitled to support the judgment of the first appellate authority on any ground but he is not entitled to raise a ground which will work adversely to the appellant. In fact, such a ground may be a totally new ground, if it is purely one of law, and does not necessitate the regarding of any evidence, even though the nature of the objection may be such that it is

not only a defense to the appeal itself but goes further and may affect the validity of the entire proceedings. However, the entertainment of such a ground would be subject to the restriction that even if it is accepted, it should be given effect to only for the purpose of sustaining the order in appeal and dismissing the appeal and cannot be made use of to disturb or to set aside the order in favour of the appellant. This proposition was held by the Bombay High Court in the case of **B.R. Bamasi v. CIT (1972) 83 ITR 223 (Bom)**. It was stated that the assessee could use the argument only to sustain the order of the AAC but not to get further relief and have the assessment itself annulled and thus adversely affect the appellant and place it in a worse position than if it had not appealed at all.

3.5 At this stage we need to discuss the case of **Sanjay Sawhney Vs. PCIT, reported in 116 taxmann.com 701 (Del)**,sinceit is not only a binding precedent butit also lucidly sets out the scope and limitations of Rule 27. In the case before us it is seen that Ground 2 before the CIT(A) was not adjudicated. On merits, CIT(A) allowed the appeal in favour of the assessee and deleted the impugned penalty.The Hon'ble Delhi High Court, after analyzing a number of judgements of the Hon'ble Supreme Court as well as of various High Courts, has held as under:

> *"22. Therefore, the position of law that materializes on a reading of the aforesaid decisions is that the appellant herein, (Respondent before ITAT) could have invoked Rule 27 to assail those grounds that were decided against him if those grounds/issues had a bearing on the final decision of the CIT(A). Revenue was certainly not taken by*

surprise as the appeal is considered to be continuation of the original proceedings. The ITAT had no discretion to deprive the appellant the benefit of the enabling Rule provision to defend the order of the CIT(A). The question of jurisdiction -which is sought to be urged by the Respondent while supporting the order in appeal, had a bearing on the final order passed by the CIT(A), because if the said issues were to be decided in favour of the appellant herein the assessee, that would have been an additional reason to delete the additions made by the A.O."

*"26. **The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis**.(emphasis added). Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent - assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant - assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant - assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under Section 153C of the Act."*

3.6 The above discussion on the legal issues surrounding the admission of a ground under Rule 27 reveals as under: -

i. The assessee can support a favourable order of CIT(A) by tendering a ground which was raised before the CIT(A) but was either held against him or not adjudicated;

ii. The Appellant, in this case the Revenue, cannot be put into a worse situation than the position that emerges from the First Appellate Order due to which the Revenue is aggrieved;

iii. The assessee can use the mechanism of Rule 27 as an instrument of defense and not as one of offence.

3.7 Considering the facts of the case and the discussion above, it deserves to be held that the assessee is justified in invoking Rule 27 and tendering before this Bench the ground no.2 as per Form 35. Having said this, it is also a settled position that Revenue cannot be put to a worse disadvantage than whatever flows from the First Appellate Order. Thus, the ground as per Rule 27 will, at best, help the assessee in supporting the favourable findings at first appellate stage. It needs to be reiterated that Rule 27 cannot be used for any other purpose.

4. Considering the claim of the proceedings becoming time barred if one is to count the start of limitation from the date of the assessment order, it is seen that while the Hon'ble Kerala High Court in the case of Grihalakshmi Vision (supra) has categorically mentioned that the

limitation would start from the date on which the Addl./JCIT issued the notice for imposing penalty u/s 271D of the Act, it is also clear that the Hon'ble Jurisdictional High Court in the case of Thapar Homes Limited reported in 159 taxmann.com 450 has reiterated its stand taken in the earlier case of same name bearing ITA No.19/2021, order dated 11.09.2023, which has also been relied upon by the Ld. AR. Through this order the Hon'ble Delhi High Court has extracted the following portion from the Thapar Homes case dated 11.09.2023 as under: -

> *"17. In our view, this argument, if accepted, would lead to absurdity, the reason being that once the appellant/revenue decides to trigger penalty proceedings against the respondent/assessee, it is incumbent upon them to keep an eye on the limitation period prescribed under section 275(1)(c) of the Act.*
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> *18. If the limitation period is connected to when the concerned officer issues notice, then the appellant/revenue can extend the period of limitation, way beyond the timeline prescribed in Section 275(1)(c).*
>
> *19. We are clearly of the view that the notice issued by the JCIT on 13-6-2011 could not have extended the period of limitation as prescribed under section 275(1)(c) of the Act.*
>
> *20. In this case, what is required to be brought to the forefront is that the AO had taken prior approval of the ACIT, who is equal in rank to the JCIT, before triggering the penalty proceedings. Thus, although the decision to initiate penalty proceedings isfound embedded in the assessment order dated 31-12-2010 and approval to frame the assessment order was given prior to the said date, the notice was issued only on 13-6-2011.*
>
> *20.1 Even though this may be an additional factor in this particular case, our reasons for holding the limitation period £ prescribed under section 275(1)(c) of the Act had expired latest by 30-6-2011, is not confined only to this aspect of the matte The appellant/revenue, as noticed above, cannot extend the period of limitation by deciding at its whim and fancy when the notice has to be issued. The notice under section 274 should have been issued before the period of limitation, as discussed above.*
>
> *21. Thus, for the foregoing reasons, the question of law which has been framed is answered against the appellant/revenue and in favour of the respondent/assessee.*

22. The appeal is disposed of, in the aforesaid terms."

In the body of this order, it is also clearly mentioned that the limitation would start from the date of the assessment order in quantum (paras 11 & 12 of this order). Considering the fact that the Jurisdictional High Court has taken the view that the limitation begins from the date of the assessment order, this decision shall prevail over the decision rendered by the Hon'ble Kerala High Court (supra). Accordingly in principle the claim put forth by the assessee, that the penalty proceedings were time barred, is acceptable and considering the discussion above regarding the value of such claims viz-a-viz the relief given in the First Appellate Order, it is held that the Revenue's appeal is dismissed on account of the ground raised according to Rule 27. We hasten to add that it is only the conclusion of the Ld. CIT(A) with regard to the merit of the addition that is affirmed through the present order. Accordingly, we do not deem it fit to delve any further into the question of whether the Hon'ble Delhi High Court's judgments in the assessee's own case for two previous years have any bearing on the present adjudication in any way.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 21.01.2026

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(SANJAY AWASTHI)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 21.01.2026

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI