

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1899/Chny/2025
निर्धारण वर्ष/Assessment Year: 2021-22
&
Cross-Objection No.65/Chny/2025
निर्धारण वर्ष/Assessment Year: 2021-22

The DCIT, Central Circle-2(2), Chennai.	v.	Jayapriya Company, No.37, Second Floor, Siva Vishnu Complex, Natesan Street, T. Nagar, Chennai-600 017.
		[PAN: AAHFJ 0958 M]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
Department by	:	Mr. Bipin C.N., CIT & Ms. R. Anita, Addl.CIT
Assessee by	:	Mr.N. Naga Prasad, Advocate (Virtual)
सुनवाईकीतारीख/Date of Hearing	:	04.09.2025
घोषणाकीतारीख /Date of Pronouncement	:	30.10.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This appeal has been preferred by the Revenue and Cross Objection filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as 'Ld.CIT(A)'), Chennai-



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19, dated 07-04-2025 for the Assessment Year (hereinafter referred to as 'AY') 2021-22.

2. At the outset, it is noted that, the Revenue's appeal in ITA No.1899/Chny/2025, is delayed by '2' days, for which, the DCIT has filed the affidavit for condonation of delay. To this, the Ld. Counsel of the assessee has not raised any serious objection. Consequently, we consider it prudent to condone the delay of '2' days in filing of the appeal and the appeal filed by the Revenue is taken up for hearing on merits.

3. Briefly stated, the facts relating to the present appeal are that, a search action u/s 132 of the Act was conducted on Jayapriya group on 16-12-2021. In the course of search, it was inter alia unearthed that, the assessee was using a remote (cloud) server. It was revealed that, the server contained a folder titled 'DATA' which inter alia included data pertaining to Jayapriya Company under the head 'Investments'. According to the AO, the data also contained entries indicating receipt of 'FD' (fixed deposits) of Rs. 43,20,84,277/- from 153 persons. It was brought to our notice that, the Investigating authorities had randomly examined some of these persons, all of whom had denied placing any deposit or FDs with the assessee. Thereafter, the case of the assessee for the relevant year was taken up for scrutiny. The AO while completing the assessment, is



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observed to have recorded his satisfaction at Para 11 [Page 66] of the assessment order that, the assessee had accepted fixed deposits in cash to the tune of Rs. 43,20,84,227/- during the FY 2020-21 in violation of provisions of section 269SS and which consequently attracted provisions of penalty u/s 271D of the Act. The AO in his satisfaction expressed stated that, the assessee has received cash FD's to the tune of Rs.43.20 Cr. in violation of Section 269SS of the Act, and hence he is referring this issue to Additional Commissioner for initiation of penalty u/s.271D of the Act. The relevant Para 11 of the assessment order dated 30-12-2022 reads as under:-

11. Acceptance of Fixed Deposits in cash:

During the course of search and seizure proceedings at No:30, Jayapriya Chit Funds Building, Main Road, Neyveli, Cuddalore Dist, Tamilnadu - 607802, a remote server (Cloud server - 103.214.132.40) was identified, data was copied and the same was seized vide annexure ANN/PVD/JPCF/ED/S. Further, on perusal of the same, it is found that the assessee group has received cash FDs during the FY 2020-21 was Rs. 43,20,84,227 which is in violation of Section 269SS of the IT Act. Hence, this issue is being referred to Additional Commissioner of Income Tax, Central Range - 2 for initiation of Penalty u/s 271D separately. [emphasis given by us]

4. It is seen that, the above assessment order was passed after obtaining prior approval from Addl. CIT, Central Range – 2, Chennai and this approval is discernible from Para 17 [Page 67] of the assessment order. It was brought to our notice that, the AO accordingly forwarded the proposal to the Addl. CIT (the competent authority) to initiate and levy penalty u/s 271D of the Act. Consequently, the Addl. CIT is noted to have issued show cause dated 10.02.2023 & 27.04.2023 upon the



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assessee for receiving FDs in cash from different persons, in violation of Section 269SS of the Act, and accordingly required the assessee to explain as to why penalty should not be levied u/s 271D of the Act. The assessee is noted to have denied received any cash from these persons and inter alia furnished confirmation letters from 42 out of 153 persons which pertained to amount(s) aggregating to Rs.14,26,12,672/-. The assessee demonstrated before the AO that these persons had never made any such cash deposits with him nor did they have the financial capability of giving such huge sums. After examining the genuineness of the confirmations filed by the relevant parties and verifying the same, the Addl. CIT is noted to have accepted the same. As because the assessee was unable to provide any evidence for the remaining 111 persons [153-42], the Addl. CIT levied penalty of Rs. 28,94,71,555/- (Rs. 43.21 cr *minus* 14.26 cr) @ 100% of the alleged cash deposits u/s 271D vide penalty order dated 31.08.2023.

5. Aggrieved by the action of the Addl.CIT, the assessee preferred an appeal before the Ld. CIT(A). In the appellate proceedings, the assessee furnished confirmations from the remaining 111 persons as well. Since these were in the nature of additional evidence, the Ld. CIT(A) sought for a remand report from the AO, who in his report dated 24-03-2025 is found to have acknowledged that he had examined/verified each of the



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letters of the alleged depositors, documents and proof of their address, wherein the said persons have denied having made any cash deposits with the assessee company and expressed his view that the confirmation-letters [i.e. the remaining 111 parties] were found to be acceptable. Taking this remand report into consideration, the Ld. CIT(A) accordingly held that there was no evidence that the assessee had received any cash FDs from these 111 persons and therefore deleted the penalty of Rs. 28,94,71,555/- vide his appellate order dated 07.04.2025.

6. Being aggrieved by the order of the Ld. CIT(A), the Revenue has filed the present appeal wherein it has raised the following grounds:-

"1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts and in law.

2. The Ld.CIT(A) erred in not confirming the levy of penalty u/s 271D of the Act of Rs. 28,94,71,555/-, without appreciating the fact of the case and the relevant provisions of section 269SS & 271D of the Act.

3. The Ld.CIT(A) erred in not appreciating that section 269SS clearly mandates that as per Explanation (iv) to the section, "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place, which attracts the levy of penalty u/s 271D.

4. The Ld.CIT(A) erred in not appreciating that it is abundantly clear from the facts of the case that the deposits mentioned and in dispute are deposits made as an advance for transfer of immovable property thereby coming squarely within the definition of "specified sum", which would enable the application of section 271D.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of appeal proceedings, the Order of the Ld CIT(Appeals) may be set aside and that of the Assessing Officer may be restored."



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7. The assessee has also filed cross-objections raising the following grounds of appeal:

1. The Id. CIT(A) has rightly deleted the penalty levied u/s.271D of the Act based on the findings and premise on which it was initiated as per satisfaction recorded in the relevant Assessment Order.
2. The Id. CIT (A) has rightly deleted the penalty based on the remand report obtained from the Addl. CIT, who confirmed that the basis on which penalty proceedings was initiated as recorded in the assessment order and subsequently levied was factually incorrect and there was no violation of provisions of section 269SS of the Act.
3. The grounds raised by the Assessing Officer (AO) are untenable as the impugned order u/s.271D of the Act passed by the Addl CIT was barred by limitation.
4. The data found in the remote server is beset with a lot of mistakes and not credible as independently deposed during the search by Mrs. Arasayee Sr. Manager Accounts and by Mr. E R Kumar, Manager.
5. The grounds raised by the Id. AO before the Hon'ble ITAT travelled much beyond the scope of satisfaction recorded for initiation of penalty, the notice proposing levy of penalty, order levying penalty and order passed by Id. CIT(A) and hence are invalid and deserve to be dismissed.
6. As the Appellant was never charged with the alleged violation of specific limb of section 269SS of the Act, as raised in the present grounds of appeal, since the very inception of penalty proceedings, the AO could not be permitted to raise it in appeal before the Hon'ble ITAT for the first time.
7. Since satisfaction of existence of violation of specific limb of section 269SS of the Act was sine qua non for initiation of penalty, the proceedings should be confined all through only to such specific violation stated in the notice and change of the satisfaction or the grounds or specific violation or the limb of section 269SS of the Act could not be allowed at any stage of the proceedings.
8. The subject matter of penalty should be in conformity with the findings of fact and charge as recorded in the satisfaction recorded in the assessment order justifying initiation of proceedings and the same cannot be changed midcourse under any circumstances whereas the Id. AO arbitrarily raised grounds before the Hon'ble ITAT altogether on a different premise other than the one based on which penalty was levied.
9. Ground Nos. 1 to 4 raised by the appellant are untenable and are liable to be dismissed on the basis of above grounds.



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8. At the time of hearing, it was brought to our notice that, the assessee raised a legal issue in Ground No. 3 of his cross objections challenging the validity of the penalty order on the ground of being barred by limitation. If this legal issue is found to be valid, it goes to the root of the jurisdiction to levy the impugned penalty, hence, we take it up first for adjudication.

9. The Ld.AR of the assessee Shri V. Naga Prasad, assailing the action of the Ld. Addl.CIT, levying penalty on 31.08.2023 submitted that the time limit for levying penalty u/s 271D of the Act is governed by Section 275(1)(c) of the Act, which reads as under:-

"275(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."*

10. For this, the Ld. AR relied on **CBDT Circular No. 10/2016** [F.NO.279/Misc./M-140/2015-ITJ], dated **26-4-2016**. According to him therefore, the order levying penalty u/s 271D is required to be passed before (a) the expiry of financial year in which proceedings had been initiated or (b) six months from end of month in which action for imposition of penalty was initiated, whichever is later. According to the



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Ld. AR, it is not in dispute that, the date for the first limb (a) of Section 275(1)(c) works out to 31-03-2023 and that, the dispute relates to the second limb (b) viz., when does the six month period from the end of the month in which action for imposition of penalty is initiated, expires. The Ld AR pointed out that, the Act has not provided the methodology to be followed for initiating penalty proceedings u/s 27D of the Act viz., how, when and by whom and therefore, according to him, the same needs to be interpreted from the language of provisions governing penalties, from analogous provisions and reported judicial decisions. In the opinion of the Ld. AR, the date on which **'action for imposition of penalty is considered as initiated'** is to be reckoned is with reference to the date on which the AO recorded his satisfaction in the assessment order for initiation of penalty u/s 271D of the Act i.e. 30-12-2022. He submitted that, in order to levy penalty, the Courts have consistently held that, there has to be a satisfaction recorded by the AO in the assessment order for the Jt/Addl. CIT to levy penalty u/s 271D of the Act and in absence of the same, any show cause issued or order passed by the Jt/addl CIT is null and void in the eyes of law. According to him, the date on which the penalty is initiated is the date on which the AO records his satisfaction in the assessment order. In support of his contention, the Ld. AR is found to



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have relied on a series of decisions in his written submissions, which are noted as under:-

- CIT v. Jai Laxmi Rice Mills Ambala City [2015] 64 taxmann.com 75 (SC)
- Grandhi Sri Venkata Amarendra v. JCIT [2024] 167 taxmann.com 352 (Andhra Pradesh)
- Sunil Agarwal v. ACIT [2025] 172 taxmann.com 54 (Rajasthan)
- Anil Sharma v. ITO [2025] 172 taxmann.com 94 (ITAT, Jaipur)
- Bhowmick Raj Singh v. JCIT [2025] 171 taxmann.com 575 (ITAT, Raipur)

11. Another important aspect pointed out in the context of the present case by the Ld. AR was that, the assessment order dated 30-12-2022 which contained express satisfaction for initiation of penalty u/s 271D of the Act was passed by the AO with the prior approval of Addl. CIT [*Para 17 / page 67 of the assessment order*]. The Ld. AR thus submitted that, the approval accorded by the Addl. CIT, Central Range – 2, Chennai shows that, even the Addl. CIT was prima facie convinced and satisfied about contravention of section 269SS attracting penalty u/s.271D after verification of seized material and draft assessment order and therefore not only was the Addl. CIT aware of the purported contravention of law by the assessee but was also a party to the decision of arriving at satisfaction and recording a finding of fact for initiation of penalty proceedings u/s 271D in the assessment order dated 30-12-2022. The Ld. AR thus asserted that, the date of recording the satisfaction by the AO in the assessment order [after obtaining approval from Jt./Addl.CIT]



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regarding violation of provisions of section 269SS and consequently attracting penalty u/s 271D, is to be reckoned as the date on which action for imposition of penalty is initiated i.e. 30-12-2022. According to him therefore, under the second limb (b) the period of limitation expired on 30-06-2023. Hence, under the first & second limb, the date of limitation was 30-03-2023 & 30-06-2023 and therefore the period of limitation, in Ld. AR's opinion, expired in terms of Section 275(1)(c) of the Act on 30-06-2023. As because the impugned penalty order was passed on 30-08-2023, it has been urged by the assessee that the impugned order is barred by limitation.

12. Countering the submissions of the Ld. AR, the Ld. CIT, DR argued that, the date on which '**action for imposition of penalty is considered as initiated**' is to be reckoned with reference to the date on which the Addl. CIT first issued notice i.e.10-02-2023, with reference to which the period of limitation in terms of the second limb of Section 275(1)(c) expired on 31.08.2023. Thus, according to her, the impugned penalty order dated 30-08-2023 was passed well within the period of limitation. She contended that, the AO was not the competent authority to levy penalty and therefore the satisfaction recorded by him in his assessment order cannot be regarded as a valid satisfaction and hence



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the date of assessment order cannot be taken as the date of initiation of penalty proceedings. Opposing the Ld. AR's submission that the assessment order containing the aforesaid satisfaction was passed after obtaining approval from Addl. CIT, the Ld. CIT, DR submitted that, such approval was only directory and administrative in nature and not binding to the AO in their quasi-judicial functions. The Ld. CIT, DR Shri Bipin C.N has filed written submissions on 03.09.2025, wherein he is noted to have inter alia raised the following contentions:

- a. Directions of supervisory authorities bind the officers only in their administrative capacity but do not bind them in their quasi-judicial functions. (Para 4)
- b. Authority which is vested with the power to impose penalty shall be the authority to initiate penalty under the Income Tax Act. (Para 4.2)
- c. No judicial or quasi-judicial function of any authority can be initiated by one authority and completed by another authority. (Para 4.3)
- d. Penalty u/s 271D gets initiated with the issue of notice to the assessee by the Joint Commissioner. (Para 5)H
- e. Limitation has to be counted from the date of initiation of penalty by Joint Commissioner. (Para 5)

13. On the strength of the aforesaid propositions, the Ld. CIT(DR) pleaded for dismissal of the cross-objections of the assessee.

14. The Ld. AR in his rejoinder submitted that, the language used in Section 275(1)(c) of the Act used the phrase '*initiation of action for imposition of penalty*' does not mean the imposition of penalty itself. It denotes the preliminary exercise undertaken by the AO being the person



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who can possibly notice the contravention [*mostly during the course of assessment proceedings*] and bring it to the notice of the competent authority being JCIT/AdditCIT, for imposition of penalty. He thus explained that, the fact of contravention noted by the AO, recording of his satisfaction/finding of fact regarding the violation, and bringing it to the notice of Joint/Addl. Commissioner is an administrative arrangement mutually decided between them. Thus, according to Ld. AR, the phrase '*action for imposition of penalty*' should mean the action taken by any income tax authority i.e AO in this case, and not necessarily by the authority [Jt./Addl CIT] who is competent to levy penalty. The Ld. AR submitted that, the language used in 275(1)(c) does not require that, the limitation is to be reckoned from the end of the month in which the competent authority (Joint Commissioner) issues a show cause notice, as it would then mean that, the Jt./Addl. CIT may take action as per his sweet will, and issue show cause notice several months or years, after the contravention has been recorded and brought to his notice by the AO, and impose penalty in 6 months from then, which is against legislative intent. The Ld. AR, in this regard, relied on a series of decisions, wherein on identical fact situation, the Courts held that the period of limitation, for the second limb of Section 275(1)(c) in the context of penalty u/s 271D/271E, is required to be ascertained with reference to the date on



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which the AO records his satisfaction in the assessment order and not the date on which the Jt/Addl CIT issues the show cause notice.

- CIT v. Hissaria Brothers [2016] 74 taxmann.com 22 (SC)
- PCIT v. Thapar Homes Ltd [2024] 159 taxmann.com 450 (Delhi)
- CIT v. Jitendra Singh Rathore [2013] 31 taxmann.com 52 (Rajasthan)
- PCIT v. Rishikesh Buildcon (P) Ltd [2023] 147 taxmann.com 220 (Delhi)
- PCIT v. JKD Capital &Finlease Ltd [2017] 81 taxmann.com 80 (Delhi)
- Shanbhag Restaurant v. DCIT [2004] 134 TAXMAN 495 (Karnataka)

15. The Ld. AR further submitted that, the Revenue's contention that, the date of initiation of penalty cannot be reckoned from the date on which the AO records his satisfaction, because the AO is not the competent authority to levy penalty, has been examined and answered in the negative by the Hon'ble Calcutta High Court in the case of **CIT v. Narayani & Sons (P) Ltd [2016] 73 taxmann.com 21**. In the decided case, it was held that, AO is permitted to initiate penalty proceedings by not only recording satisfaction/finding of fact but he is also competent to issue notice and that the Joint Commissioner is the competent authority only to impose the penalty.

16. It was further submitted by the Ld.AR that the proposition raised by the Ld. CIT(DR) that, the approval accorded by the Addl. CIT to the AO for passing the impugned order binds the AO only in their administrative capacity but do not bind him in his quasi-judicial function, is not in



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accordance with the law. He pointed out that, the AO had sought approval of draft assessment order and Addl. CIT granted approval as mandated u/s 148B of the Act as part of their respective quasi-judicial functions. The Ld AR submitted that, it is a statutory approval without which the order gets vitiated and it is binding on both Addl. CIT, the approving authority and Assessing Officer. Hence, according to him, this proposition of the Ld. CIT(DR) ought to be rejected.

17. Addressing the alternate plea of the Ld. CIT, DR that the initiation date ought to be reckoned with reference to the date on which the AO separately intimates the office of the Addl. CIT to issue notice to the assessee, the Ld. AR submitted that, once satisfaction/finding of fact is recorded by the AO, the Joint/Addl Commissioner would not have any discretion to decide the limitation period for levy of penalty by controlling the communication at their choice. If that were possible, it would lead to a very anomalous situation militating the provisions of law. For example: if AO passed assessment orders in 3 different cases in a month recording satisfaction regarding violation of section 269SS and sends communication to the competent authority in one case simultaneously, in second case after 6 months and does not send communication in 3rd case, then going by Revenue's interpretation, the time limits would be different



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in each case, even though the Act does not give such discretion to any authority. Moreover, in the third situation, the question would be whether the competent authority would be divested of jurisdiction to proceed with passing the order imposing penalty as no communication was received by him. The Ld. AR therefore submitted that, such situation(s) cannot be envisaged under the law that, the date of communication by AO is to be considered as the date of commencement of proceedings u/s 271D. The Ld. AR thus reiterated that, the limitation period provided u/s 275 does not depend upon the date of communication of initiating proceedings to the competent authority by the AO but on the date of recording satisfaction/finding of fact by the AO.

18. Heard both the parties. In order to adjudicate this legal issue, it is first relevant to cull out the legal provisions and relevant jurisprudence governing the law of limitation in the cases of penalty u/s 271D / 271E of the Act. It is observed that, the time limit for levying penalty u/s 271D/271E is governed by section 275 of the Act which provides the period by which the order imposing the penalty is required to be passed. Clause (a) of sub-section (1) deals with limitation in case of penalties initiated in the assessment or other orders based on quantum of additions made in such orders. Clause (b) covers penalties initiated in the



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assessment or other orders which are the subject matter of revision u/s 263 or 264. Clause (c) covers other cases viz., penalty proceedings in other cases. It is seen that, the CBDT in their **Circular No. 10/2016** (supra) has clarified that, the time limits laid down in Section 275(1)(c) would apply for levying penalty under section 271D / 271E of the Act. The relevant portion of the Circular (supra) is reproduced as under:

"The issue whether the limitation for imposition of penalty under sections 271D and 271E of the Income-tax Act, 1961, (hereinafter referred to as the Act) is determined under section 275(1)(a) or section 275(1)(c) of the Act, has given rise to considerable litigation.

*2. The Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Worldwide Township Projects Ltd., vide its order dated 21-5-2014 in ITA No. 232/2014, considered the issue and observed that, "It is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty in acceptance of loans above the prescribed limit otherwise than through banking channels and as such infringement of Section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. **In this view Section 275(1)(a) of the Act would not be applicable and the provisions of Section 275(1)(c) would be attracted. "The judgment has been accepted by the Central Board of Direct Taxes".***

3. In view of the above, it is a settled position that the period of limitation of penalty proceedings under sections 271D and 271E of the Act is governed by the provisions of section 275(1)(c) of the Act. Therefore, the limitation period for the imposition of penalty under these provisions would be 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. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a) of the Act.

4. Accordingly, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may not be pressed upon.

5. The above may be brought to the notice of all concerned. "[emphasis supplied]"



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19. In view of the above Circular, which is binding upon all income-tax authorities including the AO, we are of the considered view that, the time limit for passing the penalty order u/s 271D of the Act, is required to be reckoned in terms of Section 275(1)(c) of the Act. It is seen that, Section 275(1)(c) contain two limbs viz., (a) expiry of the financial year in which the act of imposition of penalty proceedings is initiated and (b) six months from the end of the month in which the penalty is initiated, whichever is later. Hence, the crucial aspect which is to be examined is which date is to be considered as the date on which '**action for imposition of penalty is considered as initiated**'. According to the Ld. AR, it is the date on which the satisfaction was recorded by the AO in the assessment order dated 30-12-2022 passed with the approval of Addl. CIT. Whereas, the Ld. CIT, DR is of the view that, the date on which the Jt.CIT issued the first notice i.e. 10.02.2023 is to be taken as the date of initiation of penalty proceedings u/s 271D of the Act. It is observed that, the '**action for imposition of penalty**' under Section 271D of the Act, is not a one stroke process. Instead it takes place in a series of different steps viz., recording of satisfaction / finding of fact by the AO regarding violation of provisions of section 269SS consequently attracting penalty u/s 271D, intimation regarding satisfaction / finding of fact by AO to the competent authority, issue of show cause notice by the competent authority to the



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assessee, passing of penalty order by the competent authority etc. In this series of steps, it is seen that, the most decisive and crucial step is the recording of satisfaction/finding of fact by the AO regarding violation of provisions of section 269SS and consequently attracting penalty u/s 271D, whether in the assessment order or otherwise. We find that the Hon'ble High Courts have consistently held that, the recording of satisfaction by the AO in the assessment order or otherwise, is mandatory and a condition precedent for commencement of penalty proceedings under section 271D/271E, and in absence of the same, the penalty proceedings shall stand vitiated in law. The relevant decisions taken note of by us, is as follows:-

i) CIT v. Jai Laxmi Rice Mills Ambala City (SC) (supra)

"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. 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



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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. These appeals are, accordingly, dismissed."

ii) **Sunil Agarwal v. ACIT (Raj HC) (supra)**

3. The brief facts are that search was conducted on the premises of the petitioner. The proceedings initiated under Section 148 of the Act of 1961 culminated in re-assessment order dated 12.03.2024 resulting in additions of Rs.9,90,000/- and Rs.23,785/- under Sections 69A and 69C of the Act of 1961 respectively. The order was passed after approval from the Additional Commissioner of the Income Tax (hereinafter 'ACIT'). On 01.10.2024 notice was issued to the petitioner for imposition of penalty under Section 271E of the Act of 1961. In the response dated 16.10.2024 the petitioner relied upon the decision of the Supreme Court in CIT v. Jai Laxmi Rice Mills Ambala City [2015] 64 taxmann.com 75/[2016] 237 Taxman 375/[2015] 379 ITR 521 to contend that there was no satisfaction recorded in the reassessment order for initiating the penalty proceedings under section 271E of the Act of 1961. The objections filed were rejected and a notice dated 03.01.2025 was issued. Hence, the present writ petition.



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4. *Learned counsel for the petitioners submitted that the issue involved that penalty under section 271D cannot be imposed if there was intent of AO to do so, is covered by decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (supra).*

5. *Learned counsel for the respondent submitted that reply filed in the present writ petition is adopted in all the connected matters. Reliance is placed upon the annexures filed with the reply to the submit that the Deputy Commissioner of Income Tax (hereafter 'DCIT') vide communication dated 01.08.2024 referred the matter to the ACIT for imposition of penalty under section 271E and the ACIT on 24.09.2024 recorded the satisfaction. It is argued that there is no requirement under section 271E for assessing officer (hereinafter 'AO') to record the satisfaction. The counsel is not able to distinguish the citation relied upon by counsel for the petitioner.*

6. *The reassessment order was passed on 12.03.2024 and no satisfaction was recorded for initiating the penalty proceedings under Section 271E.*

7. *The reliance on the reference made by the DCIT to ACIT on 01.08.2024 shall not enhance case of the department as the reference was after the conclusion of reassessment proceedings by the DCIT.*

8. *The satisfaction dated 24.09.2024 recorded by the ACIT cannot be equated with the satisfaction to be recorded in the reassessment proceedings by the concerned AO.*

9. *In Jai Laxmi Rice Mills Ambala City (supra) the Supreme Court was dealing with the issue as to whether the penalty proceedings under section 271D are independent of the assessment proceedings. In that case, in the assessment order passed in pursuance to the remand no satisfaction was recorded for initiating the proceedings under section 271E. Though the AO stated for initiation of proceedings under section 271(1)(c). The penalty proceeding was quashed on the ground that in absence of satisfaction recorded by the AO the penalty cannot be imposed.*

10. In the case in hand the DCIT had only recorded satisfaction for proceedings under Section 271(1)(c) of the Act of 1961 and no satisfaction was recorded to initiate penalty proceedings under Section 271D.

11. The issue involved in the present writ petition is squarely covered by the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (supra). The notice issued under Section 271E and the proceedings in pursuance thereto are quashed."



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iii) Grandhi Sri Venkata Amarendra v. JCIT (AP HC) (supra)

"8. We have gone through the material placed on record. The Assessing Officer, except to base his addition on the letter of the assessee dated 02-06-2014, did not record any finding that there has been any violation of the provisions of Sec.269SS of the Act by the assessee, nor was any satisfaction recorded to the effect that the alleged transaction of acceptance of loan would attract penal consequences. In the absence of any finding to the said effect, in our considered view, the penalty cannot be levied. A presumption can be drawn, in the absence of a finding by the Assessing Officer to the effect that the petitioner has violated the provisions of Sec.269SS of the Act, that the department has accepted the explanation furnished by the petitioner denying allegation of loan in cash. Therefore, it can unhesitatingly be said that, having satisfied with the explanation of the assessee, the Assessing Officer did not record any satisfaction in the assessment order to the effect that the provisions of Section 269SS of the Act, are violated and did not contemplate levy of penalty under Sec.271D of the Act.

9. In our view, the satisfaction of the Assessing Officer is required to be recorded because the officer, who passed the assessment order would not be levying the penalty under Sec.271D of the Act, unless it is recorded in the assessment order, he cannot refer the file to superior officer i.e., Joint Commissioner, for initiating levy of penalty. Unless the Assessing Officer, who is the primary authority, based on the material before it, during assessment proceedings, arrives at a finding that there has been a violation of the provisions, like in the present case, of Section 269SS, there will not be any occasion to the Joint Commissioner, who is not the Assessing Officer, to exercise his jurisdiction to levy Penalty under Section 271D. Following the decision of the Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills referred supra, we set aside the order passed under Sec.271D of the Act."

(emphasis supplied)

20. In view of the above, we hold that, the recording of satisfaction by the AO in the assessment order or otherwise, is a pre-requisite to conduct penalty proceedings u/s 271D/271E of the Act against the assessee and as a corollary therefore, the date of recording of satisfaction by the AO, in our considered view, is to be taken as the date on which '**action for imposition of penalty is considered as initiated**'.



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21. This may yet be viewed from another angle. Going by the proposition propounded by the Revenue, if the date of recording of satisfaction by the AO [mandatory pre-requisite, as held above] is to be discarded and the date on which the Jt./Addl CIT first issues notice is to be considered, then it would lead to an anomalous situation, where the Jt./Addl CIT gets a free hand to extend the period of limitation to suit his own sweet will, as the limitation would only start when he first issues the notice, which may also be several years subsequent to the discovery and recording of satisfaction by the AO. In our considered view, such an interpretation is incongruous. In support, we gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **PCIT v. Thapar Homes Ltd (supra)**, wherein it was held that that once revenue decided to trigger penalty proceedings against assessee by recording satisfaction/finding of fact regarding violation of section 269SS, it is incumbent upon it to keep an eye on limitation period prescribed under section 275(1)(c) and it could not extend period of limitation as prescribed under section 275(1)(c) by deciding at its whim and fancy when notice had to be issued. Relevant part of the decision is reproduced below:

"14. Mr Ruchir Bhatia, Senior Standing Counsel, who appears on behalf of the appellant/revenue, says that the AO was not empowered to pass the penalty order under the provisions referred to hereinabove.

14.1 Mr. Bhatia places reliance on Section 271E(2), which provides that the penalty imposable under sub-section (1) of the said section shall be imposed by the ACIT.



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14.2 It is based on the language of sub-section (2) of section 271E that Mr. Bhatia argues that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the ACIT issued the notice, i.e., 13-6-2011.

14.3 Therefore, based on this line of argument, Mr. Bhatia says that the limitation in this case expired only on 31-12-2011, and since the penalty order was passed on 30-12-2011, it was within the prescribed period of limitation, as being the latter of the two dates, as indicated in Section 275 (1) (c) of the Act.

15. We may note that the very same issue stands concluded against the appellant/revenue via the decision rendered by this Court in [IT Appeal 19 of 2021, dated 11-9-2023] titled as Pr. CIT v. Thapar Homes Ltd. 2023:DHC:7808:DB. The following observations made in the aforesaid judgment in this behalf, being relevant, are extracted hereafter:

"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.

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."

22. The Revenue before us has repeated emphasized that, as the AO is not the competent authority to levy penalty, the satisfaction recorded by him cannot be regarded as the date of initiation of penalty and that only when the Addl.CIT/Jt. CIT takes any action i.e. issues notice, is when the proceedings can be said to be initiated. We however are unable to countenance with this view of the Revenue for multiple reasons. Firstly, in the given facts of the present case, it is observed that, the assessment



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order dated 30-12-2022 inter-alia containing his satisfaction / finding of fact concerning violation of provisions of Section 269SS and consequent attraction of penal consequence u/s 271D of the Act, was passed by the AO after obtaining approval of the Addl. CIT u/s 148B of the Act, which read as under:-

"No order of assessment or reassessment or recomputation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director."

23. There is merit in the Ld. AR's submission that, the AO had forwarded the draft assessment order along with the relevant seized material to the Addl.CIT, who after verifying and examining the same had approved the assessment order, which inter alia contained satisfaction / finding of fact concerning violation of provisions of Section 269SS and consequent attraction of penal consequence u/s 271D of the Act. This approval accorded by the Addl. CIT was not directory in nature, but statutory having binding value, without which the assessment order would be rendered null & void. Hence, in the given facts, we find that, the satisfaction recorded by the AO for initiation of penalty proceedings u/s 271D, having been set out in the assessment order, after obtaining approval of Addl. CIT, and therefore, the date of the assessment order dated 30-12-2022, in our view, is to be reckoned as the date on which



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'action for imposition of penalty is considered as initiated', for the purposes of Section 275(1)(c) of the Act.

24. Secondly, it is well settled in law by now that, the recording of satisfaction / finding of fact for initiating and levying penalty is mandatory and a condition precedent, without which the penalty order shall stand rendered ab initio void in the eyes of the law. Hence, if the Revenue's argument is upheld that, the AO, in the present case, was not competent to record satisfaction for initiation of penalty u/s 271D of the Act, then it would lead to an absurd situation viz., there is no valid satisfaction recorded prior to initiation of penalty u/s 271D of the Act, and as a consequence any order passed by competent authority [Addl.CIT, in this case] based on such void satisfaction /finding of fact would not have any legs to stand on. This interpretation would therefore lead to an anomalous situation in which most penalty orders passed u/s 271D/271E would be rendered void, as ordinarily the satisfaction for initiation of penalty u/s 271D/271E is recorded by the AO who frames the income-tax assessment.

25. Lastly, we also agree with the Ld. AR that, the Jt./Addl. CIT is only vested with the powers to levy penalty under Section 271D of the Act,



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and that the provisions of Section 271D is silent as to the competent authority who can initiate the penalty proceedings. According to us, it cannot be presumed that, only the person who is competent to levy penalty under Section 271D is the only person who can initiate penalty. Since the Act has not provided the methodology to be followed to initiate penalty proceedings u/s 271D of the Act, we are of the view that, this aspect has to be interpreted from the language of provisions governing penalties, from analogous provisions and reported judicial decisions. The Ld. AR has rightly pointed out that, any purported violation of section 269SS/269T usually comes only to the notice of the AO who is in-charge of assessing the income of any assessee, as he is having direct control and possession of assessment record, seized material etc., and therefore he is the competent person to record satisfaction/finding of fact regarding the purported violation u/s 269SS, and thereafter the Joint/Addit Commissioner is competent to impose penalty after giving an opportunity of being heard to the assessee, in terms of Section 271D of the Act. According to us therefore, the AO is not precluded from initiating proceedings by issuing a notice u/s 271D of the Act. Our view is squarely supported by the decision of Hon'ble Calcutta High Court in the case of **CIT v. Narayani & Sons (P) Ltd (supra)** wherein also the Hon'ble High Court had held that, though Section 271D vests the jurisdiction of



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imposing penalty solely in the Joint Commissioner, but it does not preclude the AO from initiating the same. The relevant extracts of the judgment is as follows:-

"11. Section 274 lays down the procedure for imposition of penalty. Sub-section 1 of Section 274 provides for affording a reasonable opportunity of hearing to the assessee before an order imposing penalty is passed. Though Section 271D vests the jurisdiction of imposing penalty solely in the Joint Commissioner, it is silent as regards initiation of the proceedings. The question is, can such initiation of proceedings be made by the Assessing Officer? The Assessing Officer is the person, who is likely to come across the cases of concealment or violation of the provisions of law attracting penal provisions. Can the Assessing Officer, having come across a case of violation of law attracting penal provisions, issue a notice and in case he does so, would that be an act without jurisdiction?"

"13. A plain reading of Sub-Section 2 of Section 274, as it was, goes to show that before the said Act of 1975 was introduced, the Assessing Officer had jurisdiction to impose penalty not exceeding a sum of Rs. 1000/-. A case involving penalty imposable exceeding a sum of Rs. 1000/- was required to be referred by him to the Inspecting Assistant Commissioner, who had the jurisdiction to impose penalty exceeding a sum of Rs. 1000/-. Question arose whether in a case involving penalty imposable exceeding a sum of Rs. 1000/-, the Assessing Officer could initiate the proceedings by issuing a notice. That question was answered by the Supreme Court in the affirmative. Their Lordships in the case of D.M. Manasvi v. CIT [1972] 86 ITR 557, held as follows:—

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



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proceedings regarding the concealment of income which would constitute the basis and foundation of the proceedings for levy of penalty."

"14. Applying the views expressed by the Apex Court it can be said that in a case falling under Section 271D the Assessing Officer is not precluded from initiating the proceedings by issuing a notice."

(emphasis supplied)

26. The last alternate contention of the Revenue was that, the communication by AO to the competent authority should otherwise be taken as the date on which '**action for imposition of penalty is considered as initiated**' as that is the date when the Jt./Addl. CIT becomes aware about the violation of Section 269SS/269T by the assessee. According to us, there is no statutory provision or rule or regulation governing the methodology or time limit as regards communication by AO to the competent authority about the violation of proceedings u/s 269SS and consequent liability for penalty u/s 271D of the Act. In the absence of any specific methodology provided in the Act or by the CBDT, it is between the AO and competent authority to administratively devise their own mechanism for regular flow of information. The Joint Commissioner being immediate supervisory authority over the AO, can always call for files, reports etc., on any aspect as per his choice. It is purely an internal arrangement between the AO and his immediate supervisory authority i.e., Joint Commissioner. The communication or flow of information from AO to Joint Commissioner



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could even be informal and not necessarily formal. In such case, there is no way to determine the date of communication by AO leading to the Joint Commissioner determining date of limitation as per choice against the provisions of law. In any case, ordinarily, the assessee is not privy to such communication and cannot access such document or verify its authenticity nor even know the date of such communication, if any or whether the alleged communication was sent to the Joint Commissioner at all. Further, the illustration given to us by the Ld. AR, which we have taken note of at Para 17 above, there could be myriad of scenarios where communication(s) for the same assessee for different assessment year(s) are sent across different dates at the discretion of the AO, or it may not be sent as well and as such not only would the assessee be in dark but there would be different due date(s) u/s 275(1)(c) of the Act, which in our view cannot be the intent of the Legislature. For the aforesaid reasons, the date of communication, if any sent by the AO to the Joint Commissioner has no relevance for determining the date of limitation.

27. We further find that, the plea of the Revenue that, the date on which **'action for imposition of penalty is considered as initiated'** ought to be reckoned from the date of issue of notice by the Jt.CIT/Addl.CIT and not the date of recording of satisfaction by the AO in the assessment



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order, is found to have been specifically negated by the Hon'ble Supreme Court in the case of a. CIT v. Hissaria Brothers (supra). In the decided case, the Addl. CIT had issued notice u/s 271D to the assessee after expiry of 6 months from the end of the month in which penalty was initiated through assessment order and passed penalty order within 6 months from date of such notice. Having regard to the provisions of sections 271D and 271E, the order was held to be barred by limitation and penalty imposed was quashed by the Hon'ble Rajasthan High Court. The Hon'ble Supreme Court upheld the order of the High Court by holding as under:-

"1. On perusing the judgment of the High Court, it is found that penalty imposed on the respondent herein was also set aside on the ground that the provisions of Section 271-D and 271-E of the Income Tax Act were invoked after six months of limitation and, therefore, such penalty could not have been imposed. Since the outcome of the judgment of the High Court can be sustained on this aspect alone, it is not even necessary to go into other aspects. Leaving the other questions of law open, the appeal is dismissed. There shall be no order as to costs."

28. We find that identical view has been expressed by the Hon'ble Delhi High Court, whose relevant findings, taken note of by us, is as follows:-

i) PCIT v. Rishikesh Buildcon (P) Ltd (supra)

"12. Where the AO has initiated the penalty proceedings in his/her assessment order, the said date is to be taken as the relevant date as far as the section 275(1)(c) of the Act is concerned. In these cases, the quantum proceedings were completed by the AO on 17th/18th December 2008, and the AO initiated the penalty proceedings in December 2008, thus, the last date by which the penalty order could have been passed is 30th June 2009. The six months from the end of the month from which action of imposition of penalty was initiated would expire on 30th June



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2009. However, in this case, admittedly, the penalty order(s) were passed on 29th September 2009, and therefore, the ITAT rightly concluded that the order(s) were barred by limitation.

14. Accordingly, the present appeals are dismissed."

ii) PCIT v. JKD Capital &Finlease Ltd (supra)

"11. In fact, when the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i.e., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271-E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (c).

12. In that view of the matter, the order of the CIT (A) which has been affirmed by the impugned order of the ITAT does not suffer from any legal infirmity.

13. No substantial question of law arises for determination.

14. The appeal is dismissed."

29. We also gainfully refer to the decision rendered by the coordinate Bench of this Tribunal at Jaipur in the case of **Jagdish Chandra Suwalka v. JCIT [2023] 154 taxmann.com 504** involving identical factual matrix as that of the present case. In the instant case, the action for imposition of penalty u/s 271D was taken on 28-12-2017 by the AO, when the assessment was completed and six months from end of that



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month expired on 30-6-2018. The Joint Commissioner issued show cause notice on 06.11.2018 and imposed penalty vide order dated 28.05.2019. It was contended by the Revenue that the period of 6 months has to be reckoned from the date of issue of show cause notice by the JCIT, who was the competent Authority to impose penalty u/s 271D and since he had issued notice on 6-11-2018 and imposed penalty on 28-5-2019, within the period of 6 months from the month in which action for imposition of penalty was taken i.e., from the date of notice, the order was well within the period of limitation. The Tribunal however held that, the period of limitation for the purpose of penalty proceedings u/s 271D was not to be reckoned from the date of issue of show cause by the Jt. CIT, but from the date on which action for imposing penalty was initiated on 28.12.2017 i.e., the date of assessment order and hence, the order u/s 271D dated 28.05.2019 passed by the Jt. CIT was quashed holding the same as time barred.

"7.1 ...Thus, a penalty u/s 271D could not be imposed after the expiry of the larger period of limitation. In this case, we find that the Id. JCIT in the impugned penalty order has clearly observed that the assessment for A.Y 2015-16 was completed by the AO (ACIT Tonk) vide assessment order dated 28-12-2017 u/s 147/143(3) of the Act. The Id. JCIT also referred to the observation made by the AO that the assessee had received cash payment of Rs. 47,50,000/- from various persons as per details given, which are in contravention of Sec.269SS of the IT Act. Thus, the relevant proceedings were the assessment proceedings during the course of which, the default of accepting cash over the prescribed limit was noted by the AO and since the assessment proceedings were completed on 28-12-2017, the related financial year ended on 31-3-2018. Accordingly, the first



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time limit thus expired on 31-3-2018. For the second time limit, an action for imposition of penalty was taken on 28-12-2017 by the AO, when the assessment was completed and six months from end of that month expired on 30-6-2018 which time limit clearly expires later. Hence, the penalty u/s 271D could have been validly imposed only on before 30-6-2018 as against which, in this case, the impugned penalty was imposed much later on 28-5-2019 hence, the same is clearly barred by limitation. The Id. D/R however, contended that for this period of 6 months has to be reckoned from the date of issue of show cause notice by the Id. JCIT, who was the competent Authority to impose a penalty u/s 271D and since he issued the notice on dated 6-11-2018 and imposed the penalty on 28-5-2019 itself, which was well within the period of 6 month from the month in which 28-5-2018 action for imposition of penalty was taken. The Id. A/R however, strongly contended that for this purpose the observation made by the AO in the assessment order has to be considered and the date of the assessment order being 28-12-2017 was relevant and therefore, the period of 6 months has to be reckoned from that date. Consequently, the limitation from that date the limitation had already expired.

7.2 After careful consideration, I find that the issue involved in the present case is fully covered by the decision of Hon'ble Jurisdictional High Court in the case of Hissaria Bros. (supra). The same has been affirmed by the Hon'ble Apex Court in the case of Hissaria Brothers [2016] 74 taxmann.com 22/243 Taxman 174/386 ITR 719 holding as under.

"Penalty under ss. 271D and 271E-Limitation under s. 275- Computation- Penalty orders under ss. 271D and 271E passed beyond six months from the end of the month in which the assessments were completed were barred by limitation-CIT v. Hissaria Bros. (2007) 211 CTR (Raj) 156 affirmed."

Similar view was taken again by the Hon'ble Rajasthan High Court in the CIT v. Jitendra Singh Rathore [2013] 31 taxmann.com 52/352 ITR 327 wherein it was held under:

"Penalty under s. 271D-Limitation under s. 275-Applicability of cl (a) or cl. (c) of s. 275(1)-Show-cause notice was served on the assessee by AO on 27th March, 2003-Thereafter, the matter was referred to the Jt. CIT on 22nd March, 2004-Penalty levied by Jt. CIT by order dt. 28th May, 2004 was clearly barred by limitation- Sec. 275(1)(c) was applicable to the case-Even when the authority competent to impose penalty under s. 271D was the Jt. CIT, the period of limitation for the purpose of such penalty proceedings was not to be reckoned from the issue of show cause by the Jt. CIT, but the period of limitation was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings".

Since there is no dispute on the facts stated above, hence respectfully applying the binding judicial precedents, I hold that the penalty imposed u/s 271D, under challenge, is barred by limitation u/s 275(1)(c) of the



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Act. Hence, the same is hereby quashed. The additional ground of appeal taken by the assessee is therefore, allowed."

30. In all the above decisions (supra), the judicial forums have consistently held that, the period of limitation is to be reckoned from the date of recording of satisfaction by the AO in the assessment order, for the purposes of Section 275(1)(c) of the Act. Respectfully following the same, we countenance the assessee's plea and hold that, the period of limitation as set out in Section 275(1)(c) is to be reckoned with reference to the date of assessment order i.e. 30-12-2022 in which the AO had recorded his satisfaction/finding of fact that, the assessee was in violation of Section 269SS attracting penal consequence u/s 271D of the Act.

31. In light of the above and the judicial precedents (supra), we revert back to the facts of the present case. As noted earlier, the AO had recorded his satisfaction / finding of fact at Para 11 [page 66] of the assessment order dated 30-12-2022 wherein he stated that, the assessee had accepted fixed deposits in cash to the tune of Rs. 43.21 cr. during the FY 2020-21 in violation of provisions of section 269SS and consequently attracting provisions of penalty u/s 271D of the Act. It is further noted from Para 17 [Page 67] of the assessment order, that the assessment order inter alia including the aforesaid satisfaction, was issued after



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obtaining prior approval from Addl. CIT, Central Range – 2, Chennai. Thus, it is noted that there was a satisfaction/finding of fact recorded by the AO on 30-12-2022 that, the assessee in the relevant year, had purportedly violated provisions of Sec.269SS of the Act, which was also known to the Addl. CIT, Central Range – 2, Chennai. By issuing this assessment order, the AO had put the assessee to notice for the first time as regards the contravention of provisions of Section 269SS attracting penalty u/s.271D of the Act. Though having passed the assessment order on 30-12-2022, it is noticed that, the AO sent a communication to the Addl. CIT only on 08-02-2023 [*the Addl. CIT having approved the order was already aware of it*] and the latter issued his notice on 10-02-2023. According to us, the inordinate delay on the part of the AO to delay in communicating to the Addl. CIT on 08.02.2023 (as per penalty order) i.e. about 40 days after issuing the assessment order, according to us, cannot come to the aid of the Revenue for determining the limitation period as prescribed u/s.275(1) of the Act, as it would then give unbridled discretion to the AO as to when he should communicate the violation of Section 269SS of the Act to the Addl. Commissioner. Such unbridled discretion would fall foul of Article 14 of the Constitution and Rule of Law, which is the basic feature of Constitution of India. From the scheme of the Act, and from the ratio decidendi cited supra, it cannot be



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countenanced that AO yields unbridled powers to communicate to the Addl. Commissioner [about violation of Section 269SS of the Act] at his sweet will, which will tantamount to conferring whimsical powers to AO, which will offend Part-III of the Constitution and therefore, for the reasons already discussed earlier, the date of passing the assessment order needs to be reckoned for the purpose of calculating the limitation period u/s.275(1)(c) of the Act.

32. Having held that the date on which '**action for imposition of penalty is considered as initiated**' is 30-12-2022, the limitation period, as per first limb of clause (c) to section 275(1) ends on 31.03.2023. And as per second limb of the clause, the order imposing penalty is required to be passed within 6 months from the end of the month during which the proceeding was initiated. As the penalty was initiated through assessment order dated 30-12-2022, the order imposing penalty is required to be passed by 30-06-2023. The Addl.CIT was thus required to pass the penalty order imposing penalty within later of the aforesaid two dates i.e., on or before 30-06-2023. In the present case, the impugned penalty order is noted to have been passed by the Addl. CIT on 31-08-2023, which is beyond the period of limitation as discussed (supra) and hence, the impugned penalty order is held to be non-est in the eyes of law. Hence, we quash the impugned penalty order dated 31-08-2023 holding it



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be barred by limitation. Ground No. 3 Cross-Objection of the assessee is accordingly allowed.

33. Since we have allowed this Cross-Objection of the assessee, the appeal of the Revenue and all other cross-objections of the assessee have become academic in nature and hence, is dismissed.

34. In the result, appeal filed by the Revenue is dismissed and the Cross-Objection filed by the assessee is allowed.

Order pronounced on the 30th day of October, 2025, in Chennai.

Sd/-

(एस. आर. रघुनाथा)

(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30th October, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF