IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.611 to 618/Del/2022
Assessment Years: 2010-11, 2012-13, 2011-12,2013-14,
2010-11, 2011-12, 2012-13 & 2013-14

Vishwanath Aggarwal, House No.98, Block C-2, Janakpuri, New Delhi – 110 058.	Vs	Addl. CIT, Range-05, Delhi.
PAN: ABXPA4825B		
(Appellant)		(Respondent)

Assessee by : Shri Sudesh Garg, Advocate &
Shri Prince Bansal, CA
Revenue by : Ms Sapna Bhatia, CIT-DR

Date of Hearing : 04.07.2024
Date of Pronouncement : .07.2024

ORDER

PER ANUBHAV SHARMA, JM:

These are appeals preferred by the assessee against the orders of the Commissioner of Income Tax (Appeals) (hereinafter referred to as Ld. First Appellate Authority or 'the ld. FAA' for short) in appeals filed before him against the penalty orders of the ld. Assessing Officer (hereinafter referred to as the Ld. AO, for short). Further details of the penalty orders of the lower authorities are as under:-

ITA No.	CIT(A) who passed the order	Appeal No. & Date of order of the CIT(A)	AO who passed the assessment order & Date of order	Section of the IT Act under which the AO passed the order
611/Del/2022	CIT(A)-31, New Delhi.	551/19-20, 555/19-20, 558/19-20 & 560/19-20, dated 02.03.2022	Addl.CIT, Central Range-05, New Delhi, date: 29.06.2018	271D r.w.s. 269SS
612/Del/2022	- Do-	- Do -	- Do -	- Do -
613/Del/2022	- Do -	- Do -	- Do -	- Do -
614/Del/2022	- Do	- Do -	- Do -	- Do -
615Del/2022	- Do -	553/19-20, 554/19-20, 559/19-20 & 561/19-20, dated 02.03.2022	- Do -	271E r.w.s. 269T
616/Del/2022	- Do -	- Do -	- Do -	- Do -
617/Del/2022	- Do -	- Do -	- Do -	- Do -
618/Del/2022	- Do -	- Do -	- Do -	- Do-

2. On hearing both the sides, it comes up that assessment in the relevant assessment years was completed by the AO u/s 153A r.w.s. 143(3) of the Act and, during the course of assessment proceedings, the AO allegedly noticed that the assessee had received loan from Shri Asharamji Bapu in cash or repaid the but the same was exceeding Rs.20,000/-, and was through a mode other than by account payee cheque or account payee draft which is in violation of provisions

of section 269SS of the Act and by the said infringement, the assessee was found to be liable to penalty u/s 271D and u/s 271E of the Act for which notice was issued to the assessee. The AO made identical observations for all the four assessment years involved. Thus appeals are taken up together and facts wherever relevant are taken up of AY 2013-14 in ITA no 618/D/22. We consider it beneficial to reproduce the findings of AO in penalty order para no. 8.3 to 9, for AY 2013-2014 (supra) as follows:-

> *"8.3 The nexus of the assessee with Shri Asharam Bapu and his group /associates / disciples have been elaborately discussed in the assessment order on the basis of the seized materials, statement of various persons associated with Shri Asharam Bapu and the assessee himself. These discussions have also been discussed in para 3.1 to 3.9 and para 5.1 to 5.2 herein above. The entries recorded in the seized documents and reproduced in para 5 above in the name of 'Vishwanath' (which has been mentioned for the assessee Sh. Vishwanath Aggarwal) contains complete details of the sum credited and debited in assessee's name during the period 24.10.2000 to 01.01.2013. The entries undoubtedly shows the receipt of cash loans by the assessee from Shri Asharam Bapu and re-payment thereof. Though these impugned cash loans have been taken for giving further loans to some other persons associated with Shri Asharam Group but the same do not negate the gravity & extent of the offence committed by the assessee by violating the provisions of section 269SS & 269T and therefore the penal provisions of section 271D & 271E for such violation are attracted.*
>
> *8.4 The analysis of seized materials / documents requisition u/s 132A of the Act from Surat Police when corroborated with the statements of the persons associated with Shri Asharam Bapu group or the assessee, clearly establish the violations by the assessee as discussed in the preceding paragraphs. Subsequent retraction from the statements by Shri D.K. Chattani, associated with Shri Asharam group has no meaning arid would not jeopardize the penalty proceedings. In this regard, it is also important to mention here that The Hon'ble Apex Court in the case of Sh. Surjeet Singh Chhabra vs. Union of India & others, reported in 1997 SCW 2507, has held that the Revenue officials are not Police Officers and the confession, though retracted, is an admission and binds the petitioner. In this regard, a reference is also made to the decision of Hon'ble Delhi High Court in the case of CIT Vs Kuwer Fibres Pvt Ltd reported in 2017-TIOL-*

30-HC-DEL-IT wherein Hon'ble High Court has held that "addition made on basis of director's statement recorded during the course of search proceedings is sustainable, where the statements recorded are duly corroborated by evidences on record".

8.5 The assessee has taken a plea that reliance have been placed in this regard on the documents seized from the premises of Shri Asharam Bapu by Surat Police and requisitioned by the Department u/s 132A of the I.T. Act, 1961. It has been contended that no action can be taken in the case of the assessee in the proceedings u/s 153A or present penalty proceedings. This contention of the assessee is also devoid of any merit. In this regard, a reference is made to the decision of Hon'ble Delhi High Court in the case of CIT Vs Sonal Constructions reported in 359 ITR 532 (Delhi)[2013] wherein Hon'ble High Court has held that "Where during search certain documents were seized from possession of a partner of assessee-firm, merely because partners were not examined by Assessing Officer at time of assessment, it could not be stated that no reliance could be placed on seized materials for purposes of making additions".

8.6 The assessee has also taken a plea that as evident from the alleged seized ledger incorporated in the assessment order and reproduced in the submissions, it is clear that there is credit first, and then debit has been mentioned which would mean that the alleged sums were first given by the assessee and then received back on the same date and in such a situation the provisions of section 269SS and 269T are not applicable. This argument of the assessee is also devoid of any merit because in a number of cases this is not the situation e.g. there are four debit entries first on 09.05.2012 of Rs.l,26,00,000/-, Rs.l,27,00,000/-, Rs.1,26,36.000/- & Rs.l,27,83,833/- followed by four credit entries of matching amounts. Thus it cannot be said that the assessee has given the loan first and then has received back the same. Even if there is a case that, the credit entry is first posted followed by a debit entry, this will not absolve the assessee of the offence of such violation as both the entries are on same date which on being corroborated with other seized materials as discussed elsewhere in the assessments order as well as the present penalty order, sufficiently show the act of receipt of cash loan from Sh. Asharam Bapu, advancement of the same to some other persons and the repayment of loans & payment of interest in cash.

9. In view of the facts and discussions herein above, it is held that the assessee has made repayment of loans aggregating of Rs. 19,48,97,131/- and payment of interest of Rs.5,52,42,377/- to Sh. Asharam Bapu in cash during the F.Y. 2012-13 (relevant to A.Y, 2013-14) which is clearly contravention of provisions of Section 269T of the Act. I therefore, Impose a penalty of Rs.25,01,39,508/- u/s 271E upon the assessee which is a sum equal to the amount of repayment of loan/deposits, and payment of interest in contravention to the provisions of section 269T of the I.T. Act."

3. The CIT(A) has sustained the appeals for which the assessee is in appeal before us. The grounds for AY 2013-14 (ITA no 618/D/22) are reproduced below :-

1. The Ld. CIT (A) has erred in facts and in law in confirming the penalty amounting to Rs. 25,01,39,508/- levied by the Assessing Officer u/s 271E r.w.s. 269T of the Income Tax Act, 1961 on account of alleged repayment of cash loan in contravention of the provisions of the Act.

2. The Ld. CIT (A) has erred on facts and in law in upholding the inference that the entries in the alleged ledger accounts were true and the statement of Devidas Chhatani was reliable even though the said Devidas Chhatani filed an affidavit disowning the statement and the person to whom the ledger accounts allegedly belonged to categorically confirmed that the same were not true.

3. The Ld. CIT (A) has erred on facts and in law in treating the material seized by the Police long before search in the case of the appellant to be the material seized in the case of the appellant and has further erred in applying presumption u/s 292C of the Income Tax Act, 1961 on the same.

4. The Ld. CIT (A) has erred on facts and in law in confirming the erroneous inference drawn by the AO on the material seized by the

Police which is not coming out from the seized material even if the material is presumed to be correct.

5. The Ld. CIT (A) has erred on facts and in law in confirming the additions made in gross violation of principles of natural justice without providing an opportunity to cross examine the persons on whose statements the reliance was placed and without providing the copies of the material relied upon.

6. The Ld. CIT (A) has erred on facts and in law in treating the statement made by unrelated third parties to be the statement by the appellant and treating the same to be confessions made by the appellant.

7. The Ld. CIT (A) has erred on facts and in law in making inferences/assumptions/references which are beyond the material on record and even contrary to the facts on record.

8. The Ld. CIT (A) has erred in facts and in confirming, the penalty amounting to Rs. 25,01,39,508/-levied by the Assessing Officer u/s 2718 r.w.s. 269T of the Income Tax Act, 1961 against the principles of natural justice by passing an order with pre-mediated mind without dealing with various question of facts and law raised by the appellant and without giving proper opportunity of being heard to the appellant.

9. The Ld. CIT (A) has erred in facts and in confirming the penalty amounting to Rs. 25,01,39,508/-levied by the Assessing Officer u/s 271E r.w.s. 269T of the Income Tax Act, 1961 assuming that the alleged cash loan was repaid by the appellant within the meaning of section 269T of the Act even though indisputably there was no entry in the books of accounts for repayment of the alleged cash loan.

10. The Ld. CIT (A) has erred in facts and in confirming the penalty amounting to Rs. 25,01,39,508/-levied by the Assessing Officer u/s 271E r.w.s. 2691 of the Income Tax Act, 1961 when the person to whom the loan is alleged to have been repaid specifically asserted that no cash loan was given or received back from the appellant.

11. The Ld. CIT (A) has erred in facts and in confirming the penalty amounting to Rs. 25,01,39,508/- levied by the Assessing Officer u/s 271E r.w.s. 269T of the Income Tax Act, 1961 in relying on certain alleged ledgers in concluding that 'loans' were repaid by the appellant even though the alleged ledgers showed that credits and debits of the sums were made on the same date and most of the time credit was made to the appellant before the debit was made.

12. The Ld. CIT (A) has erred in facts and in confirming the penalty amounting to Rs. 25,01,39,508/- levied by the Assessing Officer u/s 271E r.w.s. 269T of the Income Tax Act, 1961 by assuming that the alleged cash loan was repaid when the appellant neither brought the

same in the books of accounts nor sought to explain any asset/expenditure which is in gross violation of the purpose for which section 269T was brought on statute as explained by the CBDT Circular in this regard.

13. The Ld. CIT (A) has erred on facts and in law in confirming the penalty levied by the AO by picking up alleged loan taken or repaid on the basis of certain Master Ledger even though there is no co-relation of the same with the detailed ledgers referred and relied by the AO.

14. The Ld. CIT (A) has erred on facts and in law in in confirming the penalty levied by the Assessing Officer assuming the alleged transactions recorded in the ledger 'Vishwa-Cash Vs Cheque' and 'Vishwa-Cheque Vs Cheque when the ledger title itself does not indicate that it is likely to represent any repayment of loan.

15. The Ld. CIT (A) has erred in facts and law in confirming the penalty levied by the Assessing Officer on account of alleged ledgers titled 'Vishwa Cash Vs Cheque' and 'Vishwa-Cheque Vs Cheque' even though there were no such cheque transactions in the appellant's account.

16. The Ld. CIT (A) has erred in facts and law in confirming the penalty levied by the Assessing Officer without dealing with numerous case laws referred and relied by the appellant.

17. The aforesaid grounds are without prejudice to each other and appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.

4. Heard and perused the record. The ld. AR has extensively argued on the facts of the case claiming that the incriminating evidences as relied do not establish any transaction of loan or payment of interest and relying the Board's Circular No.9/DV/2016 dated 26.04.2016, it was submitted that the initiation of penalty proceedings was not in accordance with the directions of the Board and, consequently, the penalty orders are not sustainable under the law.

5. Now it comes up that the requisitioned material contained an individual ledger of the assessee named as 'Vishwanath' having complete details of sums credited & debited in the assessee's name since 24.10.2000 to 01.01.2013. Referring to an extract of the same Ld. Counsel has submitted that the balance at the end of the day worked out to zero. It was submitted that in the table, the sums shown in the debit side are the sums of cash loan received by the assessee during the year under consideration and the credit side is having the sums of amounts repaid in cash by the assessee during the year under consideration. Referring to the assessment order it was submitted that allegedly the assessee had received cash loans from the Ashram to the tune of Rs. 21,79,65,316/- and made repayments in cash totaling to Rs. 10,23,65,316/-. It has further been

noticed by AO from the above tables that the assessee had paid interest in cash to the Sant Shri Asharamji Ashram totaling to Rs. 1,40,57,541/- and received interest in cash to the tune of Rs. 1,07,775/- during the year under consideration. Ld. Counsel has submitted that the amounts of Rs. 21,79,65,316/- on which the alleged infringement of section 269SS and the amount of Rs. 10,23,65,316/- u/s 269T was alleged and assumed by the AO/JCIT was not at all coming out from the evidence relied/referred by the AO/JCIT himself. Hence there is no justification for levying the penalties u/s 271D and 271E of the Act.

5.1 During the course of hearings, it was submitted before the Bench that there were huge and fatal variations and contradictions between the observation made by the AO and the show cause notice issued by the JCIT and the penalty order levying the penalty. Among other the following was highlighted for the same;

- The AO observed in the assessment order that the alleged breach was with regard to a transaction with Sant Shri Asharamji Ashram whereas the JCIT levied the penalties for the alleged transaction with Sh. Asharam Bapu.
- The JCIT issued show cause notice stating the assessee to be assessee company whereas it is undisputed that the assessee is an individual.
- The JCIT issued cryptic show cause notice without any satisfaction and without even detailing the transactions on which alleged infringement of section 269SS/269T had taken place.

- The amount on which the show cause notice was issued was at variance in some of the assessment years from the amount with regard to which observation alleged infringement was made by the AO. For instance, in the assessment year 2013-14 the AO alleged infringement of Rs. 4,75,05,329/- and Rs. 8,20,00,000/- u/s 269SS and Rs. 7,37,05,329/- and Rs. 8,20,00,000/- u/s 269T whereas the JCIT issued show cause notice for Rs.26,95,97,131/- u/s 269SS and Rs.19,48,97,131/- u/s 269T and levied penalties accordingly.
- The AO did not make any adverse observation with regard to breach of section 269T for alleged interest payment with regard to amounts of Rs. 1,40,57,541/-, Rs. 4,24,29,346/-, Rs. 2,62,05,329/- and Rs. 5,52,42,377/- for AY 2010-11 to AY 2013-14 respectively. The JCIT also did not issue any show cause notice with regard to the alleged breach of section 269T with regard to the aforesaid amounts yet he levied penalties for all these four years u/s 271E of the Income Tax Act.
- The AO made adverse observation with regard to alleged "Cash Vs. Cheque" and Cheque vs. Cash transaction for the AY 2012-13 and AY 2013-14 for Rs. 15,40,00,000/- and Rs. 8,20,00,000/- respectively for alleged breach of section 269SS and 269T. The JCIT did not levy a penalty either u/s 271D or u/s 271E for the AY 2012-13. In the AY 2013-14 he took totally contradictory stands and levied a penalty.

5.2 Penalty was levied on the alleged cash Vs. cheque transaction in the A.Y, 2013-14. Without prejudice to any truth in the allegation it was submitted for the sake of argument that even if it is assumed that such transactions took place then also the same by its very nomenclature do not suggest the same to be in the

nature of loan transaction which may be subjected to infringement of section 269SS/269T of the Income Tax Act. It was also submitted that if the allegation was true with regard to cash vs. cheque or Cheque Vs. Cash then the revenue should have been able to at least point out which were the alleged cheques given or taken by the appellant. The revenue has only pointed out two cheques of Rs. 6 Lakhs and Rs. 5 Lakhs to be the only material seized. From the aforesaid it was submitted that if the appellant had given or taken cheques would have definitely been part of the record. The fact that the revenue has not been able to find out the corresponding cheques in these alleged "Cheque Vs. Cash" and "Cash Vs. Cheque" transactions proves that the entire seized evidence relied on by the revenue is contrary to immutable records and, therefore, deserves to be discarded.

5.3 During the course of hearing attention of the Bench was drawn to the circular no. 09/DV/2016 issued by the CBDT on 26.04.2016. Copy of the said circular was also submitted. It was submitted that the circular was necessitated as there was a gap in the statute with regard to the timeline by which reference to competent authority for levy penalty was required to be made. Nothing in the circular is contrary to the plain provisions of the statute or to the interest of revenue. The circular was apparently issued in the interest of the revenue as the revenue was losing cases for the reason of delay in levy of penalties. In particular kind attention was drawn to para 4 which runs as follows;

> " *accordingly, the assessing officers (below the rank of Joint commissioner of Income Tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act).*

5.4 Ld. Counsel, emphasized that the reference for levy of penalty u/s 271D/271E is required to be made during the course of assessment proceedings. It was further pointed out from the penalty order that the references for the levy of penalty were made by the AO to the JCIT on 15.02.2018. The indisputable fact is that the assessments were completed on 29.12.2017, hence it was submitted that the reference for the penalties was made by the AO to the JCIT more than 45 days after the conclusion of the assessment proceedings and the same was in gross violation of the CBDT Circular referred above. On the basis of the aforesaid it was humbly submitted that the subsequent action of issuing notices as well as levying penalties was bad in law and deserves to be quashed. For the aforesaid reliance on the order of the Chennai Bench of the ITAT dated 13.03.2024 in the case of DCIT Vs. Shri Subramaniam Thanu I.T.A. Nos.785, 786, 787 & 788/Chny/2023 was made.

5.5 It was submitted that it is consistently settled law that the circulars issued by the CBDT are binding on the revenue authorities. Some of the Supreme Court cases on the aforesaid aspect as relied are as follows;

- K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 (SC)
- Navnit lal C. Javeri v. K.K. Sen Appellate Asstt. CIT [1965] 56 ITR 198 (SC)

- Keshavji Ravji and Co. v. CIT [1990] 49 Taxman 87/183 ITR 1 (SC)
- Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC)
- Collector of Central Excise v. Dhiren Chemical Industries 2002 taxmann.com 902 (SC)

5.6 During the course of hearing, it was also submitted that penalties u/s 271D/271E cannot be levied for violation of section 269SS/269T if the same sums have been treated as income of the assessee. In this regard a copy of the assessment order, reasons for reopening, grounds of appeal filed by department for the AY 2009-10 and the copy of communication made by the DDIT (Inv.) Surat dated 18.03.2016 to the AO were submitted. It was submitted that under identical circumstances for alleged breach of section 269SS and 269T no penalty u/s 271D or 271E was levied by the AO/JCIT. On the contrary identical transactions were treated to be income of the assessee. In the aforesaid background, it was submitted that once in the identical circumstances the AO has taken the view the transactions are not of the nature which may be construed to be violative of section 269SS and 269T he is not entitled to take a position to the contrary that the same are liable for penalties in the subsequent year when undisputedly there is no change whatsoever in the facts and circumstances of the matter or the evidence relied and referred by the revenue. Reliance was placed on the following case laws;

- [1992] 60 Taxman 248 (SC) Radhasoami Satsang v. Commissioner of Income-tax

- [2004] 135 Taxman 34 (Delhi): Lovely Bal Shiksha Parishad
- [2016] 71 taxmann.com 30 (Delhi): JCB India Ltd
- [2019] 112 taxmann.com 66 (Delhi - Trib.): NIIT Ltd.

5.7 It was submitted during the course of hearing that the fact of the breach of provisions of section 269SS and 269T has to be undisputed and admitted by the assessee. The aforesaid penalties would get triggered only when the transactions are either parts of the books of account or otherwise accepted by the assessee for the purposes of explaining any of his assets or transaction. In the case of the appellant the alleged transactions were neither part of the books of account nor the assessee tried to explain any of the transaction or asset under the basis of cash loans taken or given. In the case of the appellant no unaccounted cash was found or seized. The sole basis for levy of penalty was certain scanned sheets apparently seized from the place of an unrelated third party. Copies of the following judgements were filed during the course of hearing to support this contention.

- ITO Vs. M/s Muez hest India (P) Ltd. [ITA No. 6889-6890/MUM/2016]
- Shri Ram Kishan Verma Vs. Addl.CIT [ITA No. 405/JP/2019]
- CIT(Central-II) Vs. Home Developers (P) Ltd. [2015] 54 taxmann.com 159 (Delhi)

5.8 On the basis of the aforesaid judgments it was pointed out that Tribunal and Jurisdictional High Court have laid down the proposition that the penalties

u/s 271D and 271E cannot be levied unless and until the fact of receiving or paying the cash loan is indisputably established.

5.9 During the course of hearing heavy reliance was placed on the CBDT Circular 387 dated 06.07.1984.The relevant portion of the aforesaid circular was highlighted and is being reproduced herein below for kind ready reference:-

> *"22. Unaccounted cash found in the course of searches carried out by the Income-tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits and taxpayers are also able to get confirmatory letters from such persons in support of their explanation*
>
> *23. With a view to circumventing this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Bill seeks to make a new provision in the Income-tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. 10,000 or more. This prohibition will also apply in case where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount of the aggregate amount remaining unpaid is Rs. 10,000 or more. The proposed prohibition would also apply in cases where the amount of such loan or deposit together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more."*

5.10 On the basis of the aforesaid, it was submitted that it is indisputably clear that the law was enacted only with a view to **c**ountering the device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits. From the aforesaid the legislative intention behind the introduction of the aforesaid circular is clear. This section was introduced to curb the practice of

making entry in the books of accounts in respect of cash found during the course of search as a tool to explain the unexplained cash. In this context attention was drawn to following facts in the case of assessee;

- no cash was found or seized during the course of search which is being sought to be explained by the appellant or the alleged counter party by any entries.
- The assessee made no entry in the books of account incorporating the cash loans given or taken to explain any transaction.
- During the course of search no asset/expenditure was sought to be explained by the assessee invoking cash loan take or given.

5.11 It was submitted that the assessee could not be infested with huge liability u/s 271D/271E in gross violation of principles of natural justice without giving any opportunity of cross examination. It was also submitted that the AO did not himself have the relevant material on which huge reliance was placed. The penalties were levied solely by mechanically following the borrowed opinion of the DDIT(Inv.) or the Investigation wing without any independent application of mind. The penalties levied, therefore, are not sustainable in law or on facts. A compilation of the relevant cases is made available in the case law synopsis for the aforesaid proposition.

5.12 During the course of hearing, it was also submitted that the presumption u/s 132(4A) does not lie against the person from whom the material is not seized. It lies only against the person from whom the material is seized. In this

regard it was pointed out that the relevant provision of section 132(4A) as well as section 292C indisputably provides that the presumption is only against the person from whom the material is seized. It was pointed out that it is undisputed that the material on the basis of which penalty u/s 271D/271E were levied was not found or seized from the possession of the assessee. A compilation of the relevant cases is available in the case law synopsis for the aforesaid proposition.

5.13 It was submitted before the Bench that the transactions were not only denied by the appellant but were also specifically denied by the alleged counter party. It was also submitted that the relevant communication to this effect was submitted before the AO and the JCIT during the course of proceedings. The penalties in these circumstances were unsustainable.

5.14 It was submitted before the Bench that the person from whom the material was allegedly seized never alleged that the transactions pertained to the appellant or the same were in the nature of cash loans given or taken. It was, therefore, submitted that the penalties in these circumstances were unsustainable.

5.15 It was submitted before the Bench that the material on the basis of which penalties have been levied is a classic example of dumb document. It was submitted that it is a settled law that additions/penalties can't be levied on the

basis of dumb documents. A compilation of the relevant cases was made available in the case law synopsis for the aforesaid proposition.

5.16 It was pointed out during the course of hearing that the revenue has relied very heavily on the retracted statement of a third party namely Devidas Chattani who had no connection whatsoever with the appellant. It was also pointed out that during the course of assessment of alleged counter party namely Sant Shri Asharamji Ashram by the AO of the said entity issued notice u/s 131(1A) of the Act to the aforesaid person. In response to the same, the said Devidas Chattani responded that his statement recorded on 25.09.2015 was under extreme mental pressure and he did not actually know what was being recorded and attributed to him. It was submitted that in these circumstances levy of penalties on the basis of the aforesaid statement was not in accordance with the settled law in this regard. A compilation of the relevant cases was made available in the case law synopsis for the aforesaid proposition.

5.18. During the course of hearing, it was also submitted that the limitation for levy of penalties u/s 271D/271E should be reckoned from the date from which reference was made by the DDIT (Inv.) to the AO. The date on which reference was made by the DDIT(Inv.) to the AO was 18.03.2016. If limitation is counted in accordance with section 275(1)(c) then the penalties were required to be levied by 30th September 2016. In the case of the appellant the penalties have

been levied in June 2018. For the aforesaid proposition reliance was placed on the case of Shri Ram Kishan Verma Vs. Addl.CIT [ITA No. 405/JP/2019] wherein the Tribunal examined the aforesaid issue in details and held that the relevant date for counting the limitation was from the date when the communication was made by the DDIT(Inv.) to the AO.

6. This all was extensively rebutted by Ld. DR by contending that the case at hand involves the Assessee who had received loans/deposits in cash, exceeding the threshold of Rs. 20,000/-, from Sant Sh. Asharamji Ashram through a mode other than by an a/c payee cheque or a/c payee bank draft, in clear violation of sections 269SS & 269T of the Income Tax Act, 1961. Consequently, the Addl. CIT has levied penalties u/s 271 D & 271E, which have been rightly confirmed by the Ld. CIT (A). The penalty proceedings have been initiated by the assessing officer after recording his satisfaction regarding violation of provisions of section 269SS & 269T in the orders passed u/s 153A of the Act on 29.12.2017. Subsequently, the assessing officer made a reference to the JCIT on 15.02.2018 along with assessment record for initiation of penalty proceedings u/s 271D and 271E of the Act. A show cause notice was issued by the JCIT on 18.06.2018. After considering the detailed submission filed by the appellant, penalty orders were passed on 29.06.2018. Thus, the penalty orders have been passed within time as provided u/s 275(l)(c) of the Act.

6.1 Giving an account of the case of AO on merits, it was submitted that the incriminating material in the case of the Appellant, which comprises of the seized material pertaining to A.Y 2014- 15 to 2016-17 and requisitioned material pertaining to A.Y 2010-11 to 2013-14, as relied upon by the Ld. AO and Ld. CIT(A) is made here. The material requisitioned by Surat Police contained data in physical as well as electronic form. These documents comprise unaccounted cash donation receipts for the Ashram, signed blank cheques, details of sadhaks, investments in the names of various persons/sadhaks, allocation work to sadhaks and their respective duties in Ashram and details of companies being run by the Ashram in the names of various persons/sadhaks etc. A copy of the assessment completed in the case of Sant Shri Asharamji Ashram (PAN: AAAAS2722E) completed u/s 153C of the Act for AY 2010-11, is placed on record. It was submitted that on going through the facts mentioned in the order, it is seen that the requisitioned documents run into more than 58,000 pages along with soft data (mentioned on page 302 of the said order). The correlation between requisitioned documents and the soft data, between requisitioned documents and the books of accounts of the Ashram, between requisitioned documents and the documents seized during searches conducted on beneficiaries of cash loan transactions (including the appellant), have also been discussed in detail in the order. The fact that the requisitioned documents pertain to the Ashram is proved beyond doubt by the above said co-relations, the statements of various persons discussed in the order, and the

nature of documents themselves. In his statement to the Police Authorities, Shri Prahlad Bhai Sevani from whose flat these documents were requisitioned has submitted that the flat was in possession of the Ashram (pages 145-147 of the order). The documents have been explained in detail by Shri Devidas Chattani @ Dev Kumar, a key Sadhak of the Ashram. The documents were subject to special audit u/s 142(2A) of the Act. The assessments in this case are currently sub-judice before the ITAT, Ahmadabad Bench.

6.1.2 The requisitioned material consisted of documents and soft/digital data pertaining to cash loan transactions and the corresponding interest ledgers since 1992-93 onwards. On the basis of the requisition material and the material seized in cases of consequential searches an addition of Rs 380.30 crore has been made in AY 2010-11 in the case of Ashram on account of the principal amount of cash loans (refer to page 308 of the said assessment order). The loans were sourced from unaccounted cash donations received by the Ashram, as evidenced by receipts also discovered within the requisitioned material.

6.1.3 The soft/digital data and other requisitioned documents included transactions between the Ashram and the Appellant. The assessing officer has discussed the relation between documents found from the premises of the appellant in relation to the requisitioned documents, detailed from pages 258 to 275 of the said order. In the case of appellant, the requisitioned hard disk

contained a master ledger 'Master.Doc' and individual ledgers 'Vishwanath' along with two signed & blank cheque, dated 17.10.2009, issued by M/s. Kalawati Builders Pvt. Ltd. for a sum of Rs. 6,00,000/- & J.T Builders Pvt. Ltd. for a sum of Rs. 5,00,000/-, with name of the payee kept blank. It is noted that the Appellant holds -directorship in both these concerns, and the blank cheques were utilized as collateral against cash loans.

6.1.4 A hand written note indicating a payment Rs. 4 Crores to Vishwanath of Delhi on 02.07.2011 was also seized from the requisition material. Sh. Devidas Tikamdas Chattani has asserted that this note was authored by Sh. Kaushik Wani, a key sadhak of the Ashram. Further, a corresponding entry of this amount is found in the individual ledger titled 'Vishwa- Cash v/s Cheque'.

6.1.5 During the course of survey proceedings conducted at premises in Jaipur belonging to Shri Kishan Kumar Khilnani, another beneficiary of cash loan transactions, certain loose papers in the form of promissory notes/cheque were found. These documents indicated that a total of Rs. 3 crores had been extended as cash loans by the appellant to different parties in Jaipur. Similarly, during a course of search at the premises of Sh. Babubhai Patel, one of the directors at M/s Gurukrupa Krafts Pvt. Ltd. where the appellant also holds a directorship, a hand written document containing detailing interest on loans

provided by the appellant was found. Thus, this underscores the appellant was engaged in transactions of cash loan with the Ashram and other parties.

6.1.6 The requisitioned documents also contained a Board resolution passed by the Directors of M/s Arjun Nav Nirman Pvt Ltd, a group company of the Ashram. The resolution is for purchase of a flat at Palam Colony, New Delhi from M/s J.T Builders Pvt Ltd, and a group concern of appellant. Additionally, a letter written by Dev Kumar to Sh. Asharam Bapu explained the necessity of purchasing the flat on the pretext of being safe for keeping the papers of Ashram. The letter also mentions that the cheque consideration for the flat is Rs 13.50 lakhs, the remaining consideration was to be decided. During the course of search in case of the appellant from the premises of M/s Kalawati Builders Pvt Ltd at Palam, New Delhi, along with other documents a copy of the cheque issued by M/s Arjun Nav Nirman for Rs 13.50 lakhs was found, along with another handwritten page outlining the computation of the remaining payment for the flat. These documents conclusively establish the relationship between the appellant and the Ashram.

6.1.7 The seized documents have been explained in detail by Sh. Devidas Tikamdas Chattani, one of the Sadhaks in the Ashram, in his statement dated 25.09.2015, running into 46 pages and containing 39 questions. He explained the complete modus operandi, functions and methods of business activities of the Ashram in reference to the seized documents. He specifically identified the

appellant as the individual engaged in cash loan transactions with the Ashram, as indicated in ledger accounts. The appellant has challenged the credibility of the statement of Sh. Devidas Tikamdas Chattani, citing his retraction made nearly 21 months after the statement was recorded. In this regard, it is submitted that the requisitioned material contained documents relating to allocation of work to various persons within the Ashram depending upon their capabilities. According to these documents, Sh. Devidas Tikamdas Chattani's role pertains to Accounts & Finance Department where he oversees accounting functions. This matter is discussed in the Ashram's order from page 69 onwards. The appellant has contended that the CIT(A) has erroneously considered Sh. Devidas Tikamdas Chttani to be an 'auditor' whereas his qualifications do not support such a designation. It has been clarified earlier that the Ashram designated him specifically for accounting duties according to the requisitioned documents. The requisitioned documents contained two letters written by Sh. Devidas Tikamdas Chattani to Asharam Bapu wherein he has discussed the financial irregularities in accounts on the basis of audit/investigation carried out by him. These letters are discussed in the Ashram's order from pages 173 to 187. In regard to the assessment of the Ashram, the AO contends that the discrepancies highlighted in these letters pertain to transactions corroborated by cash loan ledgers, thus establishing the veracity of these ledgers. These letters have also been relied upon by the CIT(A) in the case of appellant. Thus, the

objections raised by the appellant with regard to the reliability of the statement of Sh. Devidas Tikamdas Chattani are unfounded.

6.1.8 Sh. Devidas Tikamdas Chattani has given a detailed statement explaining the various seized documents and modus oprendi of the Ashram. With an association spanning approximately 15-20 years, his role within the Ashram is clearly delineated in the requisitioned documents. In his statement, he has identified all the key persons of the Ashram including the beneficiaries of cash loan transactions. Thus, his retraction after 21 months is not contemporaneous with the events in question, nor supported by documentary evidence.

6.9 On the basis of above Ld. DR has submitted that the requisitioned documents are pertaining to cash loan transactions. They are corroborated by other seized documents including the documents seized in the case of appellant. They have been explained by Sh. Devidas Tikamdas Chattani, who has also identified the appellant as a beneficiary of cash loan transactions. Further, the Ld. CIT(A) while sustaining the penalties has comprehensively discussed the nexus and linkage between the Appellant & the Ashram and the reliability of the seized documents on the basis of which penalties have been imposed. Based on the comprehensive analysis of these documents in the assessment order and the penalty orders, it is clear that the penalties have been levied based on credible and substantial evidences indicating that the appellant was involved in the

receipt and repayment of cash loans from the Ashram, contravening the provisions outlined in sections 269SS and 269T of the Act.

6.10 Further, it is submitted that Sections 269SS and 269T were introduced in the Income Tax Act, 1961, as part of the Finance Act, 1984. The primary objective of these provisions was to curb the generation and circulation of unaccounted money in the economy, which was often facilitated through large cash transactions. To enforce the provisions of Sections 269SS and 269T effectively, Sections 27ID and 27IE were introduced. These sections prescribe stringent penalties for non-compliance. The legislative intent was to ensure that high-value transactions were conducted through banking channels, thereby creating an audit trail and ensuring transparency. Further, the Hon'ble Supreme Court's ruling in K.T.M.S. Mohammed v. Union of India (1992) is relied and contended that same affirms the broader objective of Sections 269SS and 269T, which is to ensure transparency and accountability in financial transactions

6.11 The contention of the appellant that the provision of section 269SS & section 269T are triggered only if the entries are found recorded in the books of Assessee and that in the instant case there is no entry in books of the Assessee or the person from whom loan in cash is alleged to have been received, is flawed and contrary to the legislative intent. On this issue the Hon'ble High Court of Madras judgment in the case of M. Sougoumarin vs ACIT(95 taxmann.com 240)(2018) was relied where Hon'ble High Court has upheld the

findings of ITAT sustaining the imposition of penalty u/s 271 D/271E even when the loans and their repayment had not been accounted for in the books of the assessee. It was submitted that in the present case it is evident from the statement of Sh. Devidas Tikamdas Chattani that the requisitioned material represented the duplicate set of books of accounts, i.e. 'unaccounted & unrecorded books of account' at third party premises and therefore, the contention raised by the appellant on this issue is not acceptable.

6.12 Regarding the contention of the Assessee that no action can be taken in the case of the Assessee in proceedings u/s 153A of the Act. It was submitted that there is independent nature of penalty proceedings under Sections 27ID and 27IE of the Income Tax Act. While Section 153A pertains to assessments or reassessments triggered by search or requisition operations, Sections 27ID and 27IE are specifically tailored to address penalties associated with contraventions of Sections 269SS and 269T, governing high-value cash transactions. It's crucial to recognize the distinct purposes served by these provisions. Section 153A primarily focuses on facilitating assessments or reassessments in cases where income has escaped assessment due to undisclosed assets or documents found during search operations. Conversely, Sections 27ID and 27IE are tailored to address violations related to the acceptance and repayment of high- value loans or deposits in cash, thereby promoting transparency and discouraging cash transactions above a certain threshold. Moreover, the imposition of penalties

under Sections 27ID and 27IE is contingent upon the contravention of specific statutory provisions governing cash transactions. These penalties are not contingent upon the outcomes of assessments or reassessments conducted pursuant to Section 153A.Therefore, even if no additions are made to the income of the Assessee under Section 153A, it does not absolve them from liability under Sections 27ID and 271E if they are found to have contravened the provisions of Sections 269SS and 269T. As such, the penalties prescribed under Sections 27ID and 27IE serve a distinct regulatory function, which is independent of the objectives and procedures outlined in Section 153A.

6.13 As with regard to the CBDT Circular 09/DV2016, dated 26.04.2016, it was submitted by Ld. DR that the penalty proceedings are timely, as stipulated u/s 275(l)(c) of the Income Tax Act, 1961. Further, no such contention was raised by the appellant during the course of appeal proceedings before the CIT(A) or in the Grounds of Appeal before the Bench. Furthermore, no additional GOA has been taken by the Appellant.

6.14 In regard to the Circular dated 26/4/2016, it was contended that the intention behind issuance of the circular was to provide clarity about commencement of limitation period for imposition of penalty u/s 271D & 271E of the I.T Act, 1961. The intention and the purpose of the Circular have been clarified by the CBDT in the first two paragraphs itself. The controversy which was the basis of the above noted Circular was conflicting judgments of High

Courts with regard to counting of limitation period for imposition of penalty. Some of the High Courts have ruled that time lines are to be counted from the date of issuance of SCN by the assessing officer and some other High Courts have ruled that the time line are to be counted from the date of issuance of SCN by the JCIT/Addl. CIT because it is the Range level officer who was the competent authority for imposition of penalty. Thus, the entire Circular was with regard to counting of time lines only and the interpretation of the Ld. AR that the penalty proceedings become void as the AO has not made reference to the JCIT/Addl. CIT during the course of assessment proceedings is clearly not borne out of the letter in spirit of the Circular and the contentions made by the Ld. AR are farfetched.

6.15 Ld. DR submitted that the appellant's argument is based on the advisory in Paragraph 4, which recommends that the assessing officer make a reference to the Range Head during the assessment or any other proceedings under the Act. The appellant contends that, in this case, since a reference was made by the AO to the Range Head on 15.02.2018 i.e. after the completion of the assessment proceedings, thus the reference is void and, consequently, the penalty proceedings are also void. It was submitted that this contention of the appellant is factually incorrect since the assessing officer has drawn satisfaction for violation of provisions of section 269SS & 269T in the assessment order itself. The assessment order u/s 153A of the IT Act is approved by Range Head u/s

153D of the Act and a reference u/s 271D & 271E of the Act is made as part of the order.

7. Further, it is submitted that vide the said Para 4 of the Circular, the Department has articulated its position regarding the initiation of penalty proceedings. The Department's view aligns with the judgment of the Hon'ble Kerala High Court, which states that penalty proceedings under Section 271D of the Act commence with the issuance of a show cause notice by the JCIT. However, the subsequent Para No. 5 of the Circular explicitly indicates that when any High Court renders a decision contrary to the Department's view, such Department view shall not be operative in that High Court Jurisdiction.

8. During the course of hearing the attention of this Bench was drawn towards Para No. 5. In this context, reference was made to the jurisdictional High Court decision in the case of ***Principal Commissioner of Income Tax (Central)-2 Vs. Mahesh Wood Products Pvt. Ltd. [2017] 82 taxmann.com 39 (Delhi)(2017)*** wherein the Hon'ble HC addressed the issue of starting point of limitation, it was held -

> *"7. Mr. Sanjay Kumar, learned counsel for the Revenue has sought to place reliance on the decision of this Court in CIT (TDS) v. IKEA Trading Hong Kong Ltd. [2011] 333 ITR 565/[2009] 179 Taxman 309 (Delhi) to urge that it is the date of issuance of the Show Cause Notice ('SCN') that would be the relevant starting point. Accordingly he submits that the date of issuance of the SCN by the ACIT being 28th August, 2012, limitation would expire on 28th February, 2013. Therefore, the penalty orders having been passed on 26th February, 2013 would not barred by limitation. He also sought to distinguish the decision of this Court in JKD Capital & Finlease Ltd. (supra) by stating that in the said case, the gap between the intimation send*

by the AO recommending initiation of penalty proceedings and the action taken by the ACIT was nearly five years, whereas in the present case, it was slightly over one month.

8. At the outset, the Court observes that no question arose in IKEA Trading Hong Kong Ltd. (supra) as to whether the starting point of limitation could be a date earlier than the issuance of the SCN, viz., the date on which the AO wrote a letter to the ACIT recommending such initiation. No such contention appears to have been raised or dealt with in the said case. Therefore, the said decision is distinguishable on facts.

9. However, this question came for consideration in JKD Capital and Finlease Ltd. (supra). The date on which the AO recommended the initiation of penalty proceedings was taken to be the relevant date as far as section 275(l)(c) was concerned. There was no explanation for the delay of nearly five years in the ACIT acting on the said recommendation. The Court held that the starting point would be the 'initiation' of penalty proceedings. Given the scheme of Section 275(l)(c) it would be the date on which the AO wrote a letter to the ACIT recommending the issuance of the SCN. While it is true that the ACIT had the discretion whether or not to issue the SCN, if he did decide to issue a SCN, the limitation would begin to run from the date of letter of the AO recommending 'initiation' of the penalty proceedings. ”

9. It was submitted that Hon'ble High Court did not accept the Department's View that penalty proceedings commence upon issuance of a Show Cause Notice (SCN) by the JCIT. The view adopted by the Hon'ble Delhi High Court contradicts the stance articulated in the aforementioned Circular of the Department. Thus, strictly in accordance with Para No. 5 of the Circular, the Department's interpretation does not apply to the present case. Therefore, the advisory provided to the assessing officer, which advised referencing the JCIT during assessment proceedings, was predicated on the Department's understanding as stated therein. Following the jurisdictional High Court's ruling,

the act of making a reference to the JCIT itself constitutes the initiation point for penalty proceedings in this matter.

10. Furthermore, reliance waw placed on the judgement of Hon'ble High Court of Rajasthan in its decision in the case of ***Commissioner of Income Tax v Hissaria Bros (169 Taxman 262)(2008)*** and it was submitted that hon'ble High Court has categorically held that the penalty proceedings for defaults u/s 269SS and 269T are independent of assessment proceedings. The Hon'ble Court held that;

> *"On such penalty proceedings, independent of the assessment proceedings, clause (c) of section 275(1) has been made applicable. In this category, the period of limitation for completing the penalty proceedings is linked with the initiation of the penalty proceedings itself. In such cases, the penalty proceedings can be initiated independent of any proceedings, but obviously, the penalty proceedings can be initiated only when the default is brought to the notice of the concerned authority which may be during the course of any proceedings and, therefore, for these types of cases where the penalty proceedings have been initiated in connection with the defaults for which no statutory mandate is there about any particular proceeding during the course of which only such penalty proceeding can be initiated, a different period of limitation has been prescribed under clause (c) of section 275(1) as a separate category. In cases falling under clause (c), penalty proceedings are to be completed within six months from the end of the month in which the proceedings during which the action for imposition of penalty is 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..” (Para No. 25).

10.1 Appeal against the said decision was dismissed by the Hon’ble Supreme Court. The Hon’ble High Court has held that the limitation for such penalties is to be determined as per provisions of section 275(l)(c) in view of the fact that they are independent of assessment or any particular proceedings. They are initiated when they are brought to the knowledge of the concerned authority during the course of any proceedings. In this case, penalties imposed beyond the period of 6 months from the assessment order were held to be time barred.

11. Based on the foregoing submissions, it is submitted that the Department View contained in the Circular No. 09/DV/2016, dated 26.04.2016, does not apply to the present case in light of the decisions rendered by the jurisdictional High Courts and the ruling of the Hon'ble Rajasthan High Court as affirmed by the Supreme Court. Accordingly, the advisory contained therein is also not applicable as the same was given in context of department view contained therein.

12. It was then submitted that even if the Bench were to hold the Circular or a part of the Circular to be applicable to the facts of the case, the same can be done only within the four corners of law as determined by the Hon’ble High Courts and Supreme Court. The Hon’ble Supreme Court in the case of ***Bengal***

Iron Corp. vs CTO AIR 1993 SC 2414 held that "Law is what is declared by this Court and the High Court. An executive authority can, at best, only opine its own understanding of the statute; such opinion is not binding on the quasi-judicial authority functioning of the authorities under the Act. ".

13. Reference was made to the Hon'ble Supreme Court judgement in the case of ***Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Limited and Anr., (1983)*** 1 SCC 147 where it was held that –

> *"25. Shri Ashoke Sen drew pointed attention to the earlier affidavits filed on behalf of Bharat Coking Coal Limited and commented severely on the alleged contradictory reasons given therein for the exclusion of certain coke oven plants from the Coking Coal Mines (Nationalisation) Act. But, in the ultimate analysis, we are not really to concern ourselves with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances*

which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Article 14. "

14. Then Ld. DR submitted that on the issue of initiation of penalty proceedings u/s 271D the provisions of the statute have been interpreted by the various courts. One such interpretation relied is by the Hon'ble Kerala High Court, in the case of ***Grihalaxmi Vision us Addl CIT, Kozhikode***, wherein initiation of penalty u/s 27ID was held to be form the date when the JCIT issues SCN. The other interpretation is by the jurisdictional High Court and High Court of Rajasthan. She submitted that when the jurisdictional High Court and other High Courts have interpreted the statute in a manner which is different from the interpretation given in the Circular, then that Circular or part of it cannot be made the basis of holding the entire penalty proceedings void. As held by the Hon'ble Supreme Court in the case of Sanjeev Coke Manufacturing

Co (supra), on the interpretation of a statute in case of any conflict between the department and the High Court, the view taken by the High Court shall prevail. Accordingly, the view taken by the jurisdictional high court shall prevail. The contention of the appellant deserves to be dismissed.

15. Distinguishing the decision of ITAT, Chennai in the case of ***DCIT Chennai Vs. Sh. Subramaniam Thanu in ITA No. 785, 786, 787 & 788/ Chny/2023***, for A.Y 2015-16 & 2016-17 relied on by Ld. AR, it was submitted that the operating part of the decision is reproduced below -

> *"Para 11.6 We have considered the judicial pronouncements and principles laid down by the Hon 'ble Supreme Court and also the judgement of various Hon'ble High Courts and as per the above judicial pronouncements, the Assessing Officer has to record his satisfaction before initiating penalty under section 271D of the Act in respect of violation of the provisions of section 269SS of the Act. In this case, the assessment order was passed on 20.12.2017 and reference was made by the Assessing Officer to the Addl. CIT on 14.03.2021 to initiate penalty proceedings. There is a time gap of more than three years In the assessment order dated 30.12.2017, the Assessing Officer has noted that penalty proceedings under section 271(1)(c) of the Act has to be initiated separately. However, the Assessing Officer has made a reference to the Addl. CIT to initiate the proceedings under section 27ID of the Act for violation of section 269SS of the Act. Once the Assessing Officer decided to initiate penalty under section 271(1)(c) of the Act, subsequently, reference was made to Addl. CIT to initiate penalty proceedings under section 271D of the Act, the Assessing Officer ought to have been recorded his satisfaction. However, Ld. AO has failed to do so. The same is in violation of CBDT Circular no. 09/DV/2016 dated 26.04.2016 advising Assessing Officer to make a reference to the Range Head regarding violation of provisions of Sec.269SS and 269T during the course of assessment proceedings itself. Thus, the action of Ld. AO was in gross violation of departmental circular. By considering the above facts and circumstances of the case and respectfully following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra), the judgement of the Hon 'ble Telangana High Court in the case of Srinivasa Reddy Reddeppagari v. JCIT (supra), the decisions of Chennai Benches of ITAT in the case of T. Shiju v. JCIT (supra), in the case of Smt. S.B. Patil v. JCIT (supra), the decision of the Delhi Benches of ITAT*

in the case of Anglican India Consultancy Pvt. Ltd. v. Addl. CIT (supra), the ground raised by the Department is liable to be dismissed, and circumstances of the case and respectfully following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra), the judgement of the Hon'ble Telangana High Court in the case of Srinivasa Reddy Reddeppagari v. JCIT (supra), the decisions of Chennai Benches of ITAT in the case of T. Shiju v. JCIT (supra), in the case of Smt. S.B. Patil v. JCIT (supra), the decision of the Delhi Benches of ITAT in the case of Anglican India Consultancy Pvt. Ltd. v. Addl. CIT (supra), the ground raised by the Department is liable to be dismissed."

16. Ld. DR distinguished same by pointing out following;

(i) The assessment order was passed on 30.12.2017 and reference for initiating penalty u/s 27 ID & E was made on 14.03.2021 i.e. after a time gap of more than 3 years.

(ii) In the assessment order AO has drawn satisfaction with regard to penalty proceedings u/s 271(l)(c) and no reference was made for violation of S.269SS & S. 269T and subsequently for imposition of penalty u/s 271D & 271E of the act.

(iii) The Hon'ble Tribunal decided the issue based on the fact that the AO should have recorded his satisfaction u/s 271D &271E before making a reference to the Range Head. Also, as the AO did not record the satisfaction, accordingly the reference was treated as void. Coupled with the fact the reference was also made after a gap of more than 3 years.

17. She thus contended that the above noted decision is not binding as the facts of the present case are clearly distinguishable from the S. Thanu Case

(cited Supra). She submitted that in the present case assessment order was passed u/s 153A r.w.s 143(3) on 29.12.2017 and due satisfaction was drawn by the AO with regard to initiating penalty proceedings u/s 271D & 271E as mentioned in Para 5.2, 5.3, and 6.3 of the order. Even though it is not mandatory, the reference to the JCIT/ Addl. CIT was duly mentioned/ made before passing of the order as evident from the last Para of the assessment order as –

> *"Issue penalty notice u/s 271(1)(c), as discussed in Para 5.4.1, 5.5.1, and 6.5 of this order.*
> *Refer the matter to the Jt.CIT, C.R-5, New Delhi for initiating penalties proceedings u/s 271D & 271E as discussed in Para 5.2, 5.3 & 6.3 of this order."*

18. She submitted that thus, as seen from the above a reference was duly made/ mentioned in the assessment order and as the order was passed u/s 153A after due approval of the Range Head, accordingly reference about imposition of penalty u/s 271D & 271E was also in the knowledge of the Range Head before giving approval i.e. at the assessment stage itself. It was submitted that after recording due satisfaction about imposition of penalty u/s 271D & 271E, and making a proper mention of reference to the Range Head, the physical copy of the reference was sent on 15.02.2018 i.e. after a period of around 45 days unlike the case of S. Thanu wherein reference was made after a period of more than 3 years.Thus, from the bare perusal of the facts of the present case, it is absolutely clear that the facts of S. Thanu's case were totally different and the Hon'ble ITAT has decided that case with totally different facts and in a completely different Context.

19. Further, she has argued that Ld. AR has also relied on decision of ITAT, Jaipur in the case of Sh. Ram Kishan Verma V. Addl. CIT in ITA No. 405/JP/2019 for A.Y 2015-16 and it is submitted that the facts of the case cited are totally different and the reliance by the assessee on that case is again misplaced. In the case cited, the AO has made reference to the Addl. CIT for imposition of penalty u/s 27 ID & 27 IE based on the report of the Investigation Wing and no independent satisfaction was drawn by the AO. As the satisfaction of the AO was based on the report of the Investigation Wing, the Hon'ble ITAT, Jaipur held that the initiation date for purpose of limitation u/s 275(1) should be the date on which the DDIT, investigation wing has sent information to the AO because the AO has not passed any assessment order and no satisfaction was drawn by AO. In the present case, the facts are totally different as the AO has passed a separate assessment order and drawn his own satisfaction about imposition of penalty u/s 271D & 271E and based on his own satisfaction, made a reference to the JCIT/Addl. CIT. Thus, as independent satisfaction was recorded in the present case by the AO, the initiation date for counting of limitation date for penalty u/s 271D & 271E has to be the date of reference by the AO i.e. 15.02.2018 and within a period of 6 months i.e. on 29.06.2018 .

20. Then she contended that in addition to above, the appellant had taken several other contentions including that the SCN issued by the JCIT is non-speaking and incorrectly refers to the Ashram as Company. In this regard, it was submitted before the Hon'ble Bench that the seized documents have been confronted to the appellant during assessment proceedings. On the basis of

material available, the AO has drawn his satisfaction regarding violation of provisions of section 269SS & 269T attracting penalty u/s 271D & 271E. In light of the same, the appellant has clearly understood the SCN and was well aware of the nature of proceedings against him and submitted a reply of more than 15 pages to the JCIT.

21. Taking aforesaid submissions into consideration and the material before us we find that as the entire issue about validity of penalty orders revolves around the CBDT Circular No. 09/DV/2016, the same is reproduced as under:

"Circular No. 09/DV/2016 (Departmental View)
F.No.279/Misc./M-116/2012-IT J
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi, 26th April, 2016

Subject:- Commencement of limitation for penalty proceedings under sections 271D and 271E of the Income tax Act, 1961 - reg.

It has been brought to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that there are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271ID and 271E of the Income tax Act, 1961 (hereafter referred to as the Act) commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income Tax.) or at level of the Range authority i.e. the Joint Commissioner of Income Tax./Addl. Commissioner of Income Tax.

Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty i.e. Range Head while others have held that even though the Assessing Officer is not competent to impose the penalty, the limitation commences at the level of the Assessing Officer where the Assessing Officer has issued show cause notice or referred to the initiation of proceedings in assessment order.

2. On careful examination of the matter, the Board is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a 'Departmental View"

3. The Hon'ble Kerala High Court in the case of Grihalaxmi Vision v. Addl. Commissioner of Income Tax, Range 1, Kozhikode-, vide its order dated 7-8-2015 in ITA Nos. 83 & 86 of 2014, observed that, "Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under sections 271D and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply. "

*4. The above judgment reflects the "Departmental View". **Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax.) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act).** The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c) of the Act.*

5. Where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for."

22. After giving thoughtful consideration to the matter on record, we are of the considered view that with regard to the incriminating nature of the evidences which were allegedly unearthed in the search and subsequently requisitioned by the AO, the issue about their veracity is still wide open in the light of the pendency of the appeals in the case of Sant Asharam ji Ashram and even in the case of the assessee, wherein additions on merits have been challenged. Thus, without going into the merits of the same, if the penalty order is examined, it comes up that the AO has merely relied the observations in the assessment order for concluding that there were transactions of loan taken from Asharam in cash violating section 271D and that the alleged loan were repaid to Asharam in cash leading to alleged violation and penalty u/s 271E.

23 Now as settled proposition of law, we find that penalty proceedings are included in the expression "assessment" and the true nature of a penalty is the imposition of an additional tax. But, one of the principal objects is to provide a deterrent against recurrence of default on the part of the assessee. Therefore, the relevant sections 269SS read with section 271D and 271E of the Act is a penal provision and the proceedings imposing penalty are quasi- criminal in nature. Reliance can be placed for this on Hon'ble Apex Court verdict in **CIT v. Anwar Ali [1970] 76 ITR 696** and **Anantharam Veerasingaiah & Co vs Commissioner Of Income 123 ITR 457,** and further on **CIT V/s. M Habibullah reported in 136 ITR 716 Allahabad.** The same view was taken in the case of **CIT V/s. Service Iron and Steel Rolling Mills reported in 178**

ITR 589 P&H, CIT V/s. Sohanlal Savindersingh Jagadhri reported in 178 ITR 628 P&H, Hotel And Allied Trades P.Ltd V/s. CIT reported in 221 ITR 619 Kerala. Thus the onus is heavy on the Department to not only establish the facts with categorical finding, independently of the assessment order but to also successfully canvass that due process of law was strictly followed.

24. However, the penalty orders as passed in the case in hand show that the AO has drawn conclusion on the basis of 'elaborate discussion' in the assessment order without making a specific examination of the issues, independently. It is for this reason the discrepancies with regard to the name of the borrower or lender being Shri Asharam ji Ashram or Shri Asharam Bapu or stating violator to be assessee company while the assessee is individual have crept in.

25. In this background, if we consider the purport of the CBDT Circular dated 26.04.2016 which is heavily relied by the ld. counsel of the assessee that reference for the purpose of penalty u/s 271D and 271E of Act should be made during the course of assessment proceedings itself. We find that directions were not complied. The ld. DR has although tried to defend by submitting that these directions of CBDT are only advisory, but, when the question is with regard to proceedings in the nature of levy of penalty, which are quasi criminal in nature, the Circular of CBDT which lays down a specific procedure to be followed by

AO, has to be considered to be mandatory in a way that it creates a procedural right in favour of the assessee who is likely to undergo the penal repercussions of levy of penalty and consequential prosecution even. Since, in the Act, there is no specific provision about the stage at which the reference for penalty is to be made during assessment, therefore, the initiation of the reference is akin to filing of complaint before JCIT and same has to be as per due procedure, laid down under the law. Since there is no specific provision in the Act, this circular shall prevail. Revenue cannot claim it to be merely advisory. As observed earlier, at cost of repetition we hold that this direction of Board has subsumed in the Act, as a step validating the exercise of jurisdiction to initiate penalty proceedings by JCIT concerned. Here in the case in hand initiation was not during the pendency of the assessment, as directed by the Circular, but way after, thus the assumption of jurisdiction to issue the penalty notice was vitiated and, consequently, the imposition of penalty also stands vitiated.

26. There is no force that in the absence of specific ground we cannot take cognizance of the fact if due process of law is followed or not. Rather in the ground no. 1, which is general in nature, such a plea is covered. Even otherwise too, Rule 11 of the ITAT Rules provides that the appellant, with the leave of the Tribunal can urge before it any ground not taken in the memorandum of appeal and that the Tribunal while deciding the appeal is not confined only to the grounds taken in the memorandum of appeal or taken by leave of the Tribunal under Rule 11. Reliance can be placed for this on judgment Hon'ble Punjab &

Haryana High Court in the case of **VMT Spinning Co. Ltd. Vs. CIT & Anr., 389 ITR 326 (P&H).**

27. As a sequel to aforesaid discussion we are inclined to allow the ground No.1 and, consequently, the appeals of the assessee are allowed and the penalty is deleted.

Order pronounced in the open court on 26.07.2024.

Sd/-	Sd/-
(G.S. PANNU) VICE PRESIDENT	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 26th July, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi