आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./**I.T.A. Nos.785, 786, 787 & 788/Chny/2023**
निर्धारण वर्ष/**Assessment Years: 2015-16 & 2016-17**
&
C.O. Nos. 40, 41, 42 & 43/Chny/2023
(in I.T.A. Nos.785 to 788/Chny/2023)

The Deputy Commissioner of Income Tax, Central Circle 2(2), Investigation Building, Chennai -600 034.	Vs.	Shri Subramaniam Thanu, No. 5, First Street, Karpagam Avenue, R.A. Puram, Chennai 600 028. [**PAN: AABPD8561A]**
(अपीलार्थी /Appellant)		(Respondent/Cross Objector)

Department by	:	Shri A. Sasi Kumar, CIT
Assessee by	:	Shri T. Banusekar, Advocate
सुनवाई की तारीख/ Date of hearing	:	24.01.2024
घोषणा की तारीख /Date of Pronouncement	:	13.03.2024

आदेश /**O R D E R**

PER V. DURGA RAO, JUDICIAL MEMBER:

The appeals filed by the Revenue are directed against the different but identical orders of the ld. Commissioner of Income Tax (Appeals) 19, Chennai, all dated 03.05.2023 relevant the assessment years 2015-16 and 2016-17 deleting penalty levied by appropriate officer under section 271D as well as section 271E of the Income Tax Act, 1961 ["Act" in short].

Since facts and grounds are identical, we take up the appeal of assessment year 2015-16 for adjudication.

2. Brief facts of the case are that the assessee was subjected to a search action under section 132 of the Act on 30.09.2015. Consequently, the assessee filed his return of income on 15.10.2016 declaring loss of Rs.(-) 66,45,960/-. The case of the assessee was selected for scrutiny and the assessment was completed on 30.12.2017 after making addition towards unexplained interest paid/unexplained cash expenses. Against the same, Ld. AO initiated penalty proceedings u/s 271(1)(c) of the Act.

3. Subsequently, Ld. AO, vide letter dated 15.03.2021, intimated to the appropriate authority that the assessee received a sum of Rs.17,00,00,000/- as loan on various dates from Shri Anbuchezhiyan. The receipts of loan by way of cash was in violation of section 269SS of the Act which call for penalty as per the provisions of section 271D of the Act. The appropriate authority was to consider initiation of penalty proceedings u/s 271D of the Act. The reference made by Ld. AO was duly considered and accordingly, the assessee was given a show-cause vide letter dated 02.11.2021 and 27.12.2021 to furnish his reply as to why penalty under section 271D of the Act should not be levied for violation of section 269SS of the Act. The assessee assailed the proposed penalty,

inter-alia, on the ground that the initiation of penalty was barred by limitation. However, rejecting the submissions of the assessee, the appropriate authority levied 100% penalty under section 271D of the Act for the assessment year under consideration.

4. In the assessment order, Ld. AO noted from the seized material that the assessee has paid an amount of ₹.5,93,62,500/- as interest to Sri Anbuchezhiyan for the period from 01.01.2015 to 31.03.2016 towards unaccounted cash loans. Out of the total interest, an amount of ₹.90,75,000/- paid for the relevant period from 01.01.2015 to 31.03.2015 was added back to the total income treating it as unexplained interest/cash payments.

5. Thereafter, since the payment of interest in cash was in violation of the provisions of section 269T of the Act, the Assessing Officer moved similar proposal for levy of penalty u/s 271E. A show cause notice was issued to the assessee on 29.12.2021. After considering the written submissions and since the assessee had not explained the bonafide or genuineness of the cash transaction towards payment of interest in cash, the same was in contravention of the provisions of section 269T of the

Act, the appropriate Officer levied 100% penalty under section 271E of the Act.

6. The assessee carried the matter in appeal before the ld. CIT(A) against the penalty levied under section 271D of the Act as well as section 271E of the Act. After considering the facts and circumstances as well as written submissions filed by the assessee, against the penalty levied under section 271D of the Act, the ld. CIT(A) has observed and held as under:

> *16. I have carefully considered the findings of the Addl.CIT in the penalty order, the written submissions of the appellant and the material available on record. The penalty u/s.271D has been levied in respect of violation of provisions of section 269SS of the Act by way of acceptance of loans in cash amounting to Rs. 17,00,00,000/- by the appellant from Shri. Anbuchezian. The levy of penalty has been challenged by the appellant on legal grounds as well as on merits.*
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> *17. One of the legal grounds advanced by the appellant by way of Additional Ground of appeal No.2 is that the penalty proceedings are bad in law as no satisfaction was recorded by the Assessing Officer (AO) in the concerned assessment order regarding the violation of the provisions of Sec.269SS of the Act by the appellant. In support of this contention, the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills (2015)379 ITR 521 (SC), wherein it was held that no penalty u/s.271E could be levied in the absence of recording of satisfaction by the AO in the assessment order. The appellant also placed reliance on the decision of the Hon'ble Telangana High Court in WP No.44285 of 2022 in the case of Srinivas a Reddy Reddeppagari Vs JCIT wherein the Hon'ble High Court followed the decision of the Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills (Supra) while disposing off the writ filed against the penalty order passed u/s 271D of the Act.*
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> *18. The legal ground raised by the appellant has been carefully examined. On perusal of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills (2015) 379 ITR 521 (SC) relied on by the appellant, it is seen that it was held therein that no penalty u/s 271E could be levied in the absence of recording of satisfaction by the AO in the assessment order. The relevant portion of the decision of the Hon'ble Supreme Court is reproduced as· under:*
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>> *5. As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 27 JE of the Act, though in that order the Assessing Officer wanted penalty proceeding to be*

initiated under Section 271 (l)(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.

19. The abovementioned decision of the Hon'ble Supreme Court rendered with reference to penalty u/s 271E has been followed by the Hon'ble Telangana High Court in the case of Srinivasa Reddy Reddeppagari Vs JCIT in WP No.44285 of 2022, while disposing off the writ filed against the penalty order passed u/s 271D of the Act. The Hon'ble High Court held that the provisions of secs 271D 271E are pari materia to each other and the decision of the Hon'ble Supreme Court in Jai Laxmi Rice Mills case is applicable to penalty u/s 271D also. The relevant portion of the decision of the Hon'ble High Court is extracted as under:

> *22. From an analysis of Sections 271D and 271E of the Act, it is seen that both the provisions are pari materia to each other. While Section 271D of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of Section 269SS of the Act, penalty under Section 271 E of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of Section 269T. Therefore, in a way, the two provisions are complimentary to each other.*
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> *23. In Jai Laxmi Rice Mills Ambala City (supra}, Supreme Court considered the question as to whether penalty proceedings under Section 271D of the Act is independent of the assessment proceeding? In the facts of that case, it was found that the penalty order was issued following the assessment order. However in appeal, Commissioner of Income Tax (Appeals) had set aside the original assessment order with a direction to frame assessment de nova. In the fresh assessment order, no satisfaction was recorded by the assessing officer regarding initiation of penalty proceedings under Section 271 E of the Act. It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the Commissioner of Income Tax (Appeals). It was in that context that Supreme Court held as follows:*
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>> *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.*
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>> *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.*
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> *24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the*

> *assessment order as to infraction of Section 269SS of the Act. Therefore, no penalty could be levied under Section 271D of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (I supra) wherein it was clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.I relying upon the Kerala High Court decision in Grihalaxmi Vision (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in CIT V. Mac Data Ltd. wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No. 1 imposed the penalty under Section 271D of the Act.*
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> *25. We are afraid respondent No. I had completely overlooked the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra). In the said decision as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under Section 271E of the Act. We have already discussed above that provisions of Section 271E and 271D of the Act are in pari materia. When there is a decision of the Supreme Court, it is the bounden (2013) 3 5 2 ITR 1 duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.*

20. The issue of legal tenability of penalty order passed u/s 271D in the absence of recording of satisfaction by the AO in the assessment order regarding the violation of the provisions of section 269SS has been dealt by the Hon'ble ITAT, Chennai (Jurisdictional Tribunal) in the case of T. Shiju Vs. JCIT in ITA No.2829/Chny/2018, wherein it was observed as under:

> *6. On perusal of the appellate order, we find that by reproducing the headnotes and held-portion, the ld. CIT(A) has held that the decision of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills reported in 379 ITR 521 is not applicable since the facts of the case are distinguishable. However, we find that firstly, the Id. CIT(A) has not distinguished the applicability of the above judgement of the Hon'ble Supreme Court to the present case. Secondly, in that case, even though in the original ex-parte assessment order, the Assessing Officer has recorded satisfaction that the assessee had contravened the provisions of section 269SS of the Act, but, while framing fresh assessment order, the Assessing Officer has not recorded such satisfaction regarding penalty proceedings under section 271D of the Act and thereby, the Hon'ble Supreme Court quashed the levy of penalty. In the present case in hand, the Assessing Officer has not at all recorded his satisfaction that the assessee has contravened the provisions of section 269SS of the Act warranting levy of penalty under section 271D of the Act, whereas, against various additions including disallowance under section 40(a)(ia) of the Act, the Assessing Officer proposed for initiating penalty proceedings under section 271(1)(c)of the Act, which is an identical provisions, where the income escaped assessment or furnishing of inaccurate particulars of income, attracts penalty. It is*

pertinent to reproduce the relevant paragraph of the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra):

"As pointed out above, in so far as, the fresh assessment order is concerned, there was no satisfaction recorded regarding the penalty proceeding under section 27 JE 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, in so far as penalty under section 271E is concerned, it was without any satisfaction and therefore, no such penalty could be levied."

Thus, in view of the above facts and circumstances, we are of the considered opinion that the trait preposition laid down by the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra) squarely applies to the case of the assessee. Respectfully following the above decision of the Hon'ble Supreme Court, the penalty levied under section 271D of the Act stands deleted.

21. Further, it is seen that the Hon'ble ITAT, Delhi held in the case of Anglican India Consultancy Pvt. Ltd. Vs. Addl. CIT (ITA No.121/Del/2016) vide order dated 03.10.2017 by relying on the above-mentioned decision of the Hon'ble Supreme Court that no penalty could be levied u/s 271D where the AO did not record any satisfaction in the assessment order regarding the violation of the provisions as referred to in section 271D. The relevant portion of the decision of the Hon'ble Tribunal is reproduced as under:

8.1 The assessee filed copy of the assessment order, which revealed that the Assessing Officer has not recorded anything as regards violation of provisions of section 271D of the Income Tax Act. The Assessing Officer did not record any satisfaction regarding penalty proceedings under section 271D of the I T. Act in the assessment order. Though in that order the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Income Tax Act. Thus, the penalty under section 271D was without any satisfaction and, therefore, no such penalty could be levied. The issue is, therefore, covered in favour of the assessee by judgement of Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills (supra). We accordingly set aside the orders of the authorities below and cancel the penalty under section 271D of the Income Tax Act. In view of the above, there is no need to decide appeal of the assessee on merits.

22. It is seen that Hon'ble ITAT, Kolkata also expressed the same view in the case of Binod Kumar Agarwal Vs. Jt.CIT (ITA No.238/Kl/2013) vide order dated 04.02.2016 that no penalty could be levied u/s 271D/271E where the AO did not record any satisfaction in the assessment order regarding the violation of the provisions of section 269$$/269T. The relevant portion of the decision of the Hon'ble Tribunal is reproduced as under:

5. We also find that the ld.AO has not recorded any satisfaction in the assessment order for violation of provisions of section 269SS and 269T of the Act, which is sine qua non before the ld. JCIT proceeded to initiate penalty proceedings u/s. 27 lD and 27 IE of the Act. In support of our submission we rely on the recent decision of the Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills Ambala City reported in (2015) 379 !TR 52J(SC)/64 taxmann.com 75{SC}, wherein it has been held as under:

> *"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 is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271 E 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. "*

In view of aforesaid facts and findings given thereon and respectfully following the aforesaid decision of the Hon'ble Apex Court in the case (referred to supra), we have no hesitation in directing the Id. JCJT to delete the impugned penalty levied u/s. 271D and 271E of the Act. The grounds raised by the assessee in these appeals are allowed.

23. The legal principle that it is imperative for satisfaction to be recorded in the assessment order for initiation of penalty u/s 271D/271E of the Act has been reiterated in the case of Smt S.B Patil Vs Jt. CIT (ITA Nos. 1053 & 1054 (BNG)/2014) by the Hon'ble ITAT, Bangalore in the following words:

> *7. In our opinion, the legal issue raised by the assessee do not require any fresh assimilation of facts and can therefore, be admitted. A reading of the judgment of the Hon'ble Apex Court reproduced above does show that it is thus imperative for satisfaction to be recorded in the assessment order for initiation of penalty u/s 271E of the Act. Proceedings u/s 271D of the IT Act, also in our opinion will stand on the very same footing. If satisfaction has to be recorded with respect to proceedings u/s 271E of the IT Act, similar satisfaction has to be recorded for the proceedings u/s 271D of the IT Act, 1961 also. These have not been done in the case before us. Accordingly, by virtue of judgment of the Hon'ble Apex Court in the case of CIT Vs Jai Laxmi Rice Mills (Supra), we are of the opinion, that the levy of 'penalty u/s 2 71 D & 2 71 E of the IT Act, 1961 cannot survive. Such orders are set aside and the appeals of the assessee are allowed.*

24. Having regard to the binding decisions of the Hon'ble Supreme Court and Hon'ble jurisdictional Tribunal and the decisions of the Hon'ble Telangana High Court and various Hon'ble Tribunals mentioned above, it is held that recording of satisfaction by the AO in the assessment order regarding the violation of the provisions of section 269SS is a mandatory requirement for valid initiation of penalty proceedings us 271D of the Act and no penalty could be levied if the AO failed to record such satisfaction in the assessment order. In the present case, on perusal of the assessment order u/s 143(3) r.w.s 153A dated 30.12.2017, it is seen that no such satisfaction has been recorded by the AO in the said assessment order. Hence, having regard to the failure of the AO to record his satisfaction in the assessment order with regard to the violation of the provisions of Sec. 269SS, it is held that the penalty proceedings u/s. 271D of the Act have not been validly initiated and consequently, the penalty order passed by the Addl. CIT is bad in Law

25. Another legal ground raised by the appellant by way of Additional Ground No.1 is that the penalty order is barred by limitation of time as the said order has not been passed

within 6 months from the end of the month in which the reference was made by the AO to the Addl. CIT for initiation of penalty proceedings u/s 271D. In support of this contention, the appellant placed reliance on the decision of Hon'ble Delhi High Court in the case of Principal CIT Vs Mahesh Wood Products P Ltd (2017) 394 ITR 312 (Delhi).

26. The legal ground raised by the appellant has been carefully examined. In the said decision, the Hon'ble Delhi High Court held that the date on which reference was made by the AO to the Addl. CIT requesting for initiation of penalty proceedings u/s 271D is required to be considered as the date of initiation of penalty proceedings and the limitation of time of 6 months from the end of the month in which action for imposition of penalty is initiated as laid down in sec 275(1)(c) has to be reckoned from the said date and not from the date on which the penalty show-cause notice is issued by the Addl. CIT. The relevant portion of the decision of Hon'ble High Court is extracted as under:

> *However, this question came up for consideration in JKD Capital & 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(1)(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(1)(c) it would be the date on which the AO wrote a letter to the 4CIT 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.*

27. In the present case, the AO made reference to the Addl. CIT informing him that the appellant has violated the provisions of 269SS and requesting him to consider initiation of penalty proceedings u/s 271D vide letter dated 15.03.2021. As per the decision of Hon'ble Delhi High Court mentioned above, the said date of 15.03.2021 is required to be considered as the date of initiation of penalty proceedings. Consequently, the limitation of time for passing the penalty order u/s 271D expired on 30.09.2021. However, the penalty show-cause notice was issued by the Addl. CIT on 02.11.2021 and the penalty order was passed on 30.05.2022. It is therefore evident that the penalty order has not been passed within the statutory time limit which lapsed on 30.09.2021. In view of this reason, it is held that the penalty order is time barred and the same is legally unsustainable.

28. In view of the aforesaid discussion, the penalty of Rs.17,00,00,000/- levied u/s.271D of the Act is directed to be deleted. The Additional Grounds of appeal Nos.1 and 2 are accordingly allowed.

7. Aggrieved, the Revenue is in appeal before the Tribunal for the assessment years under consideration.

8. The assessee, in support of the order passed by the ld. CIT(A), has filed Cross Objections for the assessment years under consideration.

9. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee has raised two important legal grounds before the ld. CIT(A). The first ground raised by the assessee is that the Assessing Officer has not recorded satisfaction before initiating penalty under section 271D of the Act and in support of the same, the assessee relied upon various decisions before the ld. CIT(A). The ld. CIT(A), by following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills 379 ITR 521 (SC) and also the judgement of the Hon'ble Telangana High Court in W.P. No. 44285 of 2022 in the case of Srinivasa Reddy Reddeppagari v. JCIT, the decisions of Chennai Benches of ITAT in the case of T. Shiju v. JCIT in ITA No. 2829/Chny/2018 dated 07.06.2019 and in the case of Smt. S.B. Patil v. JCIT in ITA Nos. 1053 & 1054 (BNG)/2014 dated 10.02.2016, the decision of the Delhi Benches of ITAT in the case of Anglican India Consultancy Pvt. Ltd. v. Addl. CIT in ITA No. 121/Del/2016 dated 03.10.2017, held that the Assessing Officer has not been validly initiated the penalty proceedings under section 271D of the Act and consequently, the penalty proceedings initiated by the Assessing Officer is bad-in-law. Finally, the impugned penalty levied under section 271D of the Act was deleted.

10. We have gone through the penalty order and the order passed by the ld. CIT(A) as well as perused the case law relied upon. In this case, the Assessing Officer has passed assessment order under section 143(3) r.w.s. 153A of the Act dated 30.12.2017 for the assessment year 2015-16. Subsequently, reference was made by the Assessing Officer vide letter dated 15.03.2021 to the Addl. CIT by stating to consider to initiate penalty proceedings under section 271D of the Act for having violated the provisions of section 269SS of the Act by the assessee. Accordingly, the Addl. CIT levied penalty under section 271D of the Act.

11.1 In so far as case law relied on by the assessee, which were considered by the ld. CIT(A) are concerned, in the case of Jai Laxmi Rice Mills Amabala City (supra), the Hon'ble Supreme Court has held as under:

> *Section 271E of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269T (Recording of satisfaction) - Assessment years 1991-92 and 1992-93 - Assessee was engaged in large scale purchase and sale of wheat - For relevant years, Assessing Officer passed assessment order determining certain taxable income - While framing assessment, Assessing Officer also opined that assessee had contravened provisions of section 269SS and, thus, penalty proceedings were initiated under section 271E - Commissioner (Appeals) set aside said assessment order with a direction to frame assessment de novo - After remand, Assessing Officer passed fresh assessment order but in said assessment order, no satisfaction regarding initiation of penalty proceedings under section 271E was recorded - Tribunal as well as High Court held that when original assessment order itself was set aside, satisfaction recorded therein for purpose of initiation of penalty proceeding under section 271E would also not survive - Accordingly, impugned penalty order was set aside - Whether since impugned penalty*

order was passed under section 271E without recording any satisfaction, same was rightly set aside by authorities below - Held, yes [In favour of assessee]

11.2 This decision has been followed in the case of Srinivasa Reddy Reddeppagari v. JCIT (supra) by the Hon'ble High Court of Telengana has observed and held as under:

> *24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the assessment order as to infraction of Section 269SS of the Act. Therefore, no penalty could be levied under Section 271D of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra) wherein it was clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.1 relying upon the Kerala High Court decision in Grihalaxmi Vision (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in CIT V. Mac Data Ltd.(2013) 352 ITR 1 wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No.1 imposed the penalty under Section 271D of the Act.*
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> *25. We are afraid respondent No.1 had completely overlooked the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra). In the said decision as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under Section 271E of the Act. We have already discussed above that provisions of Section 271E and 271D of the Act are in pari materia. When there is a decision of the Supreme Court, it is the bounden duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.*

11.3 By following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra), in the case of T. Shiju v. JCIT in ITA No. 2829/Chny/2018 dated 07.06.2019, the Coordinate Benches of the Tribunal has observed and held as under:

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessment was completed under section 143(3) of the Act by assessing total income at ₹.28.28.870/- after making various additions. Moreover, while framing the assessment order, the Assessing Officer has not given any findings/observations that the assessee has contravened the provisions of section 269SS of the Act. Against the additions/disallowances, it is an admitted fact that the Assessing Officer proposed for initiating penalty proceedings under section 271(1)(c) of the Act. Thus, it is a clear cut case that on perusal of the assessment order, the Assessing Officer has not recorded any satisfaction recorded regarding penalty proceedings under section 271D of the Act.

6. On perusal of the appellate order, we find that by reproducing the headnotes and held-portion, the ld. CIT(A) has held that the decision of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills reported in 379 ITR 521 is not applicable since the facts of the case are distinguishable. However, we find that firstly, the Id. CIT(A) has not distinguished the applicability of the above judgement of the Hon'ble Supreme Court to the present case. Secondly, in that case, even though in the original ex-parte assessment order, the Assessing Officer has recorded satisfaction that the assessee had contravened the provisions of section 269SS of the Act, but, while framing fresh assessment order, the Assessing Officer has not recorded such satisfaction regarding penalty proceedings under section 271D of the Act and thereby, the Hon'ble Supreme Court quashed the levy of penalty. In the present case in hand, the Assessing Officer has not at all recorded his satisfaction that the assessee has contravened the provisions of section 269SS of the Act warranting levy of penalty under section 271D of the Act, whereas, against various additions including disallowance under section 40(a)(ia) of the Act, the Assessing Officer proposed for initiating penalty proceedings under section 271(1)(c)of the Act, which is an identical provisions, where the income escaped assessment or furnishing of inaccurate particulars of income, attracts penalty. It is pertinent to reproduce the relevant paragraph of the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra):

> *"As pointed out above, in so far as, the fresh assessment order is concerned, there was no satisfaction recorded regarding the penalty proceeding under section 27 JE 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, in so far as penalty under section 271E is concerned, it was without any satisfaction and therefore, no such penalty could be levied."*

Thus, in view of the above facts and circumstances, we are of the considered opinion that the trait preposition laid down by the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra) squarely applies to the case of the assessee. Respectfully following the above decision of the Hon'ble Supreme Court, the penalty levied under section 271D of the Act stands deleted.

11.4 By following the judgement of the Hon’ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra), in the case of Anglican India

Consultancy Pvt. Ltd. v. Addl. CIT in ITA No. 121/Del/2016, the Delhi Benches of the Tribunal has observed and held as under:

> *8. After considering the rival submissions, we are of the view that the penalty is not leviable in the matter. Hon1)le Supreme Court h the case of CIT Vs. Jai Laxmi Rice Mills (2015) 379 ITR 521 (SC) held as under:*
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> > *" For the assessment year 1992-93, the assessment order was passed on the assessee on February 26,199, ex parte. While framing the assessment, the Assessing Officer observed that the assessee had contravened the provisions of section 269SS of the Income-tax Act, 1961, and because of this the Assessing Officer was satisfied that penalty proceedings under section 271D of the Act were to be initiated. On appeal, the Commissioner (Appeals) by order dated December 5, 1996, set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity to the assessee. Meanwhile penalty under section 271D was levied by order dated September 23, 1996, i.e., before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. After remand, the Assessing Office passed afresh assessment order but in this assessment order, no satisfaction regarding initiation of penalty proceedings under section 271D of the Act was recorded. The Tribunal as well as the High Court held that the penalty order passed on the basis of the original assessment order could not still survive when that assessment order had been set aside because the satisfaction recorded therein for the purpose of initiation of the penalty proceedings would also not survive. On further appeals:*
> >
> > *Held, dismissing the appeals, that in the fresh assessment order there was no satisfaction recorded regarding penalty proceedings under section 271D 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, the penalty under section 271D was without any satisfaction and, therefore, no such penalty could be levied. "*
>
> *8.1 The assessee filed copy of the assessment order, which revealed that the Assessing Officer has not recorded anything as regards violation of provisions of section 271D of the Income Tax Act. The Assessing Officer did not record any satisfaction regarding penalty proceedings under section 271D of the I T. Act in the assessment order. Though in that order the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Income Tax Act. Thus, the penalty under section 271D was without any satisfaction and, therefore, no such penalty could be levied. The issue is, therefore, covered in favour of the assessee by judgement of Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills (supra). We accordingly set aside the orders of the authorities below and cancel the penalty under section 271D of the Income Tax Act. In view of the above, there is no need to decide appeal of the assessee on merits.*

11.5 By following the judgement of the Hon'ble Supreme Court in the case of CIT v. Jai Laxmi Rice Mills (supra) as well as the judgement of the Hon'ble Telangana High Court in the case of Srinivasa Reddy Reddeppagari v. JCIT (supra), in the case of ACIT v. Shri Bapu Reddy Jala in ITA No. 606/Hyd/2022 dated 15.06.2023, the Hyderabad Benches of the Tribunal has also observed and held as under:

> *12. We have heard the rival arguments made by both the sides and perused the material available on record. Firstly, the Hon'ble Delhi High Court in the case of CIT vs. Standard Brand reported in 285 ITR 295 had decided the issue in favour of the assessee by holding that the penalty cannot be imposed on the basis of alleged undisclosed income and simultaneously treating the said amount in violation of 269SS of the Act. In our view, the requirement of 269SS is that the specified sum had been accepted by the assessee in cash which is prohibited by the Act. However, undisclosed income is contrary to the disclosed income i.e. specified sum disclosed in the return.*
>
> *13. Further, we are of the opinion that recording of the satisfaction by the Assessing Officer is sine qua non for initiating the penalty u/s 271D of the Act. The Assessing Officer in Para 3 of his order, though had mentioned that the Assessing Officer has proposed the imposition of penalty u/s 271D for violation of the provisions of section 269SS of the Act, however, after looking into the assessment order reproduced herein below, it is abundantly clear that neither such proposal for imposition of penalty u/s 271D was proposed by the Assessing Officer nor any satisfaction for initiation of penalty was recorded in the assessment order vide Para 4.0 & 5 are reproduced herein below:*
>
> > *"4.0 In his defense, the AR of the assessee claimed that the sale transaction of the agricultural land was entered after the banking hours. However, as per the assessee, by depositing the cash in the day bank, the purchaser agreed to give DD on the next day. On the same was theft took place from the assessee's house and later, the cash recovered by the police. As per direction of the court, the Police Department handed over the cash to the Income Tax Department. According to the assessee, in these circumstances the said transaction could not be routed through the bank.*
> >
> > *5.0 The assessee's claim that the purchaser intended to deposit the cash and obtain a Demand Draft for payment to the acceptable. There was no cognizable need for the assessee to keep cash in his custody when he intended to get paid by a Demand Draft on the very next day. The claim of the assessee is mere afterthought which is not corroborated by any independent documentation. In the absence of the same, the submission of*

the assessee is rejected as an afterthought and unsubstantiated. Since, both the payer and payee in transaction possessed valid operational bank accounts, no reasonable cause has been demonstrated for receiving the monies outside the banking channels. Moreover, the assessee could not substantiate the unavoidable circumstances/bonafide reasons under which it accepted the cash more than Rs.20,000/-, otherwise than by an account payee cheque or account payee draft or use of electronic clearing system through a bank account".

14. It may be relevant to note here that the Coordinate Bench of the Tribunal in the case of Raja Reddy Nalla vs. Addl. CIT in ITA Nos.520 & 522/Hyd/2022 dated 31/05/2023 while deciding an identical issue had observed as under:

> *"12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case levied penalty of Rs.40.00 lakhs u/s 271D of the I.T. Act on the ground that the assessee has violated the provisions of section 269SS by accepting cash of Rs.40.00 lakhs being his share for sale of the immovable property. We find the learned CIT (A) confirmed the penalty levied by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. Before deciding the issue on merit as per grounds of appeal, we would first like to adjudicate the additional ground raised by the assessee challenging the validity of the levy of penalty u/s 271D in absence of recording of satisfaction in the body of the assessment order.*
>
> *13. A perusal of the assessment order nowhere shows that the Assessing Officer has recorded his satisfaction for initiating penalty proceedings u/s 271D of the I.T. Act. We find an identical issue had come up before the Hon'ble jurisdictional High Court in the case of Srinivasa Reddy Reddeppagari vs. Jt. CIT vide writ petition No.44285 of 2022 dated 26.12.2022. In that case penalty proceedings were initiated by issue of a show-cause notice u/s 274 r.w.s. 271D on the ground that the assessee has violated the provisions of section 269SS of the I.T. Act which attracts levy of penalty u/s 271D of the I.T. Act. Before the Hon'ble High Court, the assessee, through the writ petition challenged the penalty levied u/s 271D on the ground that no satisfaction was recorded by the Assessing Officer in the assessment order as to imposition of penalty. It was argued that non-recording of satisfaction is fatal. The decision of the Hon'ble Supreme Court in the case of CIT vs. Jayalakshmi Rice Mills Ambalacity, reported in (2015) 64 Taxmann.com 75 (S.C), was relied upon. Accordingly, the Hon'ble jurisdictional High Court held that provisions of section 271D and 271E are pari materia to each other and the recording of satisfaction is a must. The relevant observation of the Hon'ble High Court reads as under:*
>
> > *"13. We have considered the rival submissions made at the bar.*
> >
> > *14. Issue raised in the writ petition is whether without satisfaction being recorded in the assessment order, penalty Order dated*

08.07.2015 passed by the Kerala High Court in ITA.Nos.83 & 86 of 2014 can be levied by the Joint Commissioner under Section 271D of the Act ?

15. Insofar the present case is concerned, we find that in the assessment order dated 24.03.2022 passed under Section 153A of the Act, return of income filed by the petitioner was accepted by the assessing officer and accordingly, the total income was assessed. In the return of income, petitioner had admitted receiving total income of Rs.80,84,180.00 which was also accepted by the assessing officer.

16. Subsequently, respondent No.1 took the view that petitioner had sold immovable properties for a total sale consideration of Rs.92,13,000.00 out of which he had accepted cash to the tune of Rs.87,80,000.00 which was in violation of Section 269SS of the Act, attracting penalty under Section 271D of the Act.

17. Before we advert to the reply submitted by the petitioner, we may mention that under Section 269SS of the Act, no person shall take or accept from any other person (referred to as a depositor) any loan or deposit or any specified sum otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if the amount of such loan or deposit or specified sum is twenty thousand rupees or more. However, as per the first proviso, the rigor of Section 269SS is not applicable to the Government, banking company, post office savings bank or cooperative bank etc. As per the second proviso, this provision would also not be applicable where both the depositor and the receiver are having agricultural income and neither of them has any income chargeable to tax under the Act.

18. Section 271D of the Act deals with penalty for failure to comply with the provisions of Section 269SS of the Act. Section 271D of the Act being relevant is extracted hereunder:

> *Penalty for failure to comply with the provisions of section 269SS.*
> *271D. (1) If a person takes or accepts any loan or deposit [or specified sum] in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit [or specified sum] so taken or accepted.] [(2) Any penalty imposable under sub- section (1) shall be imposed by the [Joint] Commissioner.]*

19. Thus, what sub-section (1) of Section 271D provides for is that if a person takes or accepts any loan or deposit or specified amount in contravention of the provisions of Section 269SS, he

> *shall be liable to pay by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. Sub-section (2) clarifies that any penalty imposable under sub-section(1) shall be imposed by the Joint Commissioner.*
>
> *20. It would be useful to refer to Section 271E of the Act also at this stage which deals with penalty for failure to comply with the provisions of Section 269T of the Act. Be it stated that Section 269T of the Act provides that no branch of a banking company or a cooperative bank and no other company or cooperative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who had made the loan or deposit or who had paid the specified advance or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if such an amount is twenty thousand rupees or more. As in the case of Section 269SS, Section 269T of the Act also does not apply to the Government, banking company, post office savings bank etc. Section 271E of the Act reads as under:*
>
> *Penalty for failure to comply with the provisions of section 269T.*
> *271E.*
> *[(1)] If a person repays any [loan or] deposit [or specified advance] referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit [or specified advance] so repaid.] [(2) Any penalty imposable under sub-section(1) shall be imposed by the [Joint] Commissioner.]*

21. Thus, sub-section (1) of Section 271E of the Act provides that if a person repays any loan or deposit or specified advance referred to in Section 269T of the Act otherwise than in accordance with the provisions of that section, he shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit or specified advance so repaid. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

22. From an analysis of Sections 271D and 271E of the Act, it is seen that both the provisions are pari materia to each other. While Section 271D of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of Section 269SS of the Act, penalty under Section 271E of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of Section 269T. Therefore, in a way, the two provisions are complimentary to each other.

23. In Jai Laxmi Rice Mills Ambala City (supra), Supreme Court considered the question as to whether penalty proceedings under Section

271D of the Act is independent of the assessment proceeding? In the facts of that case, it was found that the penalty order was issued following the assessment order. However, in appeal, Commissioner of Income Tax (Appeals) had set aside the original assessment order with a direction to frame assessment de novo. In the fresh assessment order, no satisfaction was recorded by the assessing officer regarding initiation of penalty proceedings under Section 271E of the Act. It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the Commissioner of Income Tax (Appeals). It was in that context that Supreme Court held as follows:

> *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.*
> *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.*

24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the assessment order as to infraction of Section 269SS of the Act. Therefore, no penalty could be levied under Section 271D of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra) wherein it was clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.1 relying upon the Kerala High Court decision in Grihalaxmi Vision (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in CIT V. Mac Data Ltd.3 wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No.1 imposed the penalty under Section 271D of the Act.

25. We are afraid respondent No.1 had completely overlooked the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra). In the said decision as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction

must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under Section 271E of the Act. We have already discussed above that provisions of Section 271E and 271D of the Act are in pari materia. When there is a decision of the Supreme Court ((2013) 352 ITR 1) it is the bounden duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.

26. Article 141 of the Constitution of India is clear that law declared by the Supreme Court shall be binding on all courts within the territory of India. This is further clarified in Article 144, which says that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. We are therefore, of the unhesitant view that respondent No.1 overlooked the relevant considerations while passing the impugned order dated.29.11.2022.

27. Further, issue in the present writ petition is not the competence of the Joint Commissioner in issuing the order of penalty. Therefore, reference to Grihalaxmi Vision (2 supra) was wholly unnecessary.

28. Consequently, we set aside the impugned order dated 29.11.2022 and remand the matter back to the file of respondent No.1 to pass a fresh order in accordance with law after giving a reasonable opportunity of hearing to the petitioner.

29. Writ Petition is accordingly allowed. No costs."

14. Since admittedly there is no recording of satisfaction by the Assessing Officer in the body of the assessment order for initiating penalty proceedings u/s 271D of the I.T.Act, therefore, respectfully following the decision of the Hon'ble jurisdictional High Court in the case of Srinivas Reddy Reddeppagari vs. Jt. CIT (Supra) the penalty levied by the Assessing Officer and sustained by the CIT (A) is liable to be quashed. We hold accordingly and direct the Assessing Officer to cancel the penalty levied u/s 271D of the I.T. Act, 1961. Since the assessee succeeds on this legal ground, the grounds challenging the levy of penalty of Rs.40.00 lakhs u/s 271D on merit become academic in nature and therefore, not adjudicated".

15. In the light of the above, we are of the opinion that the penalty imposed by the Assessing Officer had been rightly deleted by the learned CIT (A). In view of the above discussion, the appeal of the Revenue is dismissed.

16. In the result, appeal filed by the Revenue is dismissed.

11.6 We have considered the judicial pronouncements and principles laid down by the Hon'ble Supreme Court and also the judgement of

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

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

12. In so far as another legal ground raised by the assessee before the ld. CIT(A) with regard to the limitation, by following the judgement of the Hon'ble Delhi High Court in the case of PCIT v. Mahesh Wood Products P Ltd. (2017) 394 ITR 312(Delhi), the ld. CIT(A) has considered this legal ground and passed a detailed order, which is reproduced as under:

> *25. Another legal ground raised by the appellant by way of Additional Ground No.1 is that the penalty order is barred by limitation of time as the said order has not been passed within 6 months from the end of the month in which the reference was made by the AO to the Addl. CIT for initiation of penalty proceedings u/s 271D. In support of this contention, the appellant placed reliance on the decision of Hon'ble Delhi High Court in the case of Principal CIT Vs Mahesh Wood Products P Ltd (2017) 394 ITR 312 (Delhi).*
>
> *26. The legal ground raised by the appellant has been carefully examined. In the said decision, the Hon'ble Delhi High Court held that the date on which reference was made by the AO to the Addl. CIT requesting for initiation of penalty proceedings u/s 271D is required to be considered as the date of initiation of penalty proceedings and the limitation of time of 6 months from the end of the month in which action for imposition of penalty is initiated as laid down in sec 275(1)(c) has to be reckoned from the said date and not from the date on which the penalty show-cause notice is issued by the Addl. CIT. The relevant portion of the decision of Hon'ble High Court is extracted as under:*

> *However, this question came up for consideration in JKD Capital & 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(1)(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(1)(c) it would be the date on which the AO wrote a letter to the 4CIT 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.*

27. In the present case, the AO made reference to the Addl. CIT informing him that the appellant has violated the provisions of 269SS and requesting him to consider initiation of penalty proceedings u/s 271D vide letter dated 15.03.2021. As per the decision of Hon'ble Delhi High Court mentioned above, the said date of 15.03.2021 is required to be considered as the date of initiation of penalty proceedings. Consequently, the limitation of time for passing the penalty order u/s 271D expired on 30.09.2021. However, the penalty show-cause notice was issued by the Addl. CIT on 02.11.2021 and the penalty order was passed on 30.05.2022. It is therefore evident that the penalty order has not been passed within the statutory time limit which lapsed on 30.09.2021. In view of this reason, it is held that the penalty order is time barred and the same is legally unsustainable.

28. In view of the aforesaid discussion, the penalty of Rs.17,00,00,000/- levied u/s.271D of the Act is directed to be deleted. The Additional Grounds of appeal Nos.1 and 2 are accordingly allowed.

13. We find that Ld. CIT(A) has followed the judgement of the Hon'ble Delhi High Court in the case of PCIT v. Mahesh Wood Products P Ltd. (supra) and decided the additional legal ground in favour of the assessee. Respectfully following the ratio of aforesaid decision, we find no infirmity in the order passed by the ld. CIT(A). Thus, the ground raised by the Revenue stand dismissed.

14. Under the above facts and circumstances and considering various judicial pronouncement, we hold that the ld. CIT(A) has correctly deleted

the penalty levied under section 271D of the Act for both the assessment years 2015-16 and 2016-17.

15. Since the Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills Ambala City (supra) wherein it was clarified that provisions of Section 271E are in *pari materia* with the provisions of Section 271D of the Act, no separate adjudication for levy of penalty under section 271E of the Act is warranted. Accordingly, all the appeals filed by the Revenue are dismissed.

16. Since we have confirmed the order of the ld. CIT(A) in deleting the penalty levied under section 271D and section 271E of the Act, the Cross Objections filed by the assessee become infructuous and accordingly, the COs filed by the assessee are dismissed.

17. In the result, all the appeals filed by the Revenue as well as Cross Objections filed by the assessee are dismissed.

Order pronounced on the 13th March, 2024 at Chennai.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 13.03.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.