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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision : 01.08.2025*+ **ITA 262/2025**

PR. COMMISSIONER OF INCOME TAX -7

.....Appellant

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant Mann, JSC &amp; Ms. Aditi Sabharwal, Advocate.

versus

THAPAR HOMES PVT. LTD.

.....Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 46575/2025(condn of delay in filing appeal)**

1. For the reasons stated in the application, the delay of 56 days in filing the captioned appeal stands condoned.
2. The application stands disposed of.

**ITA 262/2025**

3. The challenge in this appeal under Section 260A of the Income Tax



Act, 1961 (**the Act**) filed by the Revenue is to an order dated 27.11.2024 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G', New Delhi (**ITAT**) whereby the ITAT has decided the appeal filed by the Revenue – being ITA No.6423/Del/2016.

4. The appeal pertains to the Assessment Year (**AY**) 2009-10. The Revenue has filed the aforesaid appeal before the ITAT against an order dated 09.09.2016 passed by the Commissioner of Income Tax (Appeals) [**CIT(A)**] whereby the CIT(A) had set aside the penalty imposed on the respondent/Assessee. The same was on the ground that the penalty was imposed beyond the period of limitation. This is in the fact(s) situation that the Assessment Order under Section 143(3) of the Act was passed by the Assessing Officer (**AO**) on 31.12.2010 with an observation that the penalty proceeding shall be initiated separately. The reference was made by the AO to the concerned Additional Commissioner of Income Tax (**ACIT**) on 07.06.2011 and pursuant to the notice issued by the ACIT, the penalty order dated 30.12.2011 under Section 271E of the Act was passed. The penalty imposed was for ₹3,44,15,000/-, which is equivalent to the amount paid contrary to Section 269T of the Act.

5. The case of the Revenue before the ITAT was that CIT(A) had erred in law in holding the order Section 271E was barred by limitation without appreciating that the order was passed within six months of initiating the proceedings by the ACIT who was competent to levy the penalty; whereas, the case of the respondent / Assessee was that the CIT (A) had passed a reasoned order by relying upon various judicial precedents and also the Central Board of Direct Taxes (**CBDT**) Circular dated 26.04.2016.



6. The CIT (A) has referred to the circulars issued by the CBDT and also to judicial precedents. The relevant reasoning of the CIT (A) is from paragraph 11 onwards, which we consider apposite to reproduce as follows:

*“11. The next vital issue here is whether the period of 6 months as specified u/s 275(1)(c) has to be reckoned from the issuance of notice by ICIT/Addl.CIT or from the issuance of satisfaction/notice by the AO. The Hon’ble jurisdictional High Court in the case of PCIT VS. JKD Capital & Finlease Ltd. as already highlighted above has been categorical in holding that the period of limitation as specified u/s 275(1)(c) starts with issuance of notice by the AO and not by the JCIT/Addl.CIT. The specific observations of the Hon’ble Court on the issue are reproduced as under:-*

*“Mr. Kamal Sawhney, learned Senior standing counsel appearing for the Revenue submitted that the AO has no power to initiate the penalty proceedings under Section 271-E of the Act and it was only the Joint CIT who could have done so. Therefore, for the purpose of limitation under Section 275 (1) (c), the relevant date should be the date on which notice in relation to the penalty proceedings were issued. In the present case, as the Additional CIT issued notice to the Assessee on 12th March 2012, the order of the Additional CIT passed on 20th March, 2012 was within limitation. We are unable to agree with the above submission of learned Standing counsel for the Revenue. Section 275 (1) (c) reads as under:*

*275. (1) No order imposing a penalty under this Chapter shall be passed (a).....)(c) in any other case, after the expiry of the financial year in which the proceedings, in*



*the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.*

*In terms of the above provision, there are two distinct periods of limitation for passing a penalty order, and one that expires later will apply. One is the end of the financial year in which the quantum proceedings are completed in the first instance. In the present case, at the level of the AO, the quantum proceeding was completed on 28th December, 2007. Going by this date, the penalty order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.*

*Considering that the subject matter of the quantum proceedings was the noncompliance with Section 269 T of the Act, there was no need for the appeal against the said order in the quantum proceedings to be disposed of before the penalty proceedings could be initiated. In other words, the initiation of penalty proceedings did not hinge on the completion of the appellate quantum proceedings.*

*In fact, when the AO recommended the initiation of penalty proceedings the AO*



*appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271- E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (C). In that view of the matter, the order of the CIT (A) which has been affirmed by the impugned order of the ITAT does not suffer from any legal infirmity. No substantial question of law arises for determination. The appeal is dismissed.”*

*12. It is further seen that circular has been issued by the CBDT No.9 dated 26.4.2016 as under:*

*“1. 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 271D 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 Incometax/Addl. Commissioner of Income-tax.*

*2. 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.*

*3. 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".*

*4. The Hon'ble Kerala High Court in the case of Grihalakshmi Vision v. Addl. CIT, vide its order dated 7th August, 2015 in I.T.A. Nos. 83 and 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 the 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 section 271D and 271E 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.*

*5. 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.*

*6. 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 judgement to the notice of the Central Technical Committee. The CTC shall examine the said judgement 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.*

*7. The above clarification may be brought to the*



*notice of all officers.”*

*13. The perusal of the circular no.9 issued by the CBDT as reproduced above shows that the departmental view as expressed by the Hon'ble Kerala High Court in the case of Grahlaxmi Vision Ltd. vs. Addl.CIT would not be operative in the area falling in the jurisdictional High Court which has contrary view on the issue. It has already been highlighted that the Hon'ble Delhi High Court has held that the period of limitation to be starting from the date of issuance of notice by the assessing officer and not from the issuance of penalty notice issued by the JCIT/Addl.CIT. The facts of the case under consideration shows that the penalty notice had been issued by the AO on 31.12.2010 along with the passing of the assessment order and subsequent issue of another notice by the Addl.CIT on 13.6.2011 would not mean that initial notice issued by the AO would cease to be valid and operative. Therefore the penalty to be imposed u/s 271E had to be done before 30.6.2011 and not 31.12.2011. In view of the above detailed analysis the penalty order passed by the Addl.CIT (Central) (Range -2) is beyond the period of limitation as specified u/s 275(1)(c). The same is therefore held to be null and void.”*

7. The ITAT noting aforesaid dates, was of the view that imposition of the penalty under Section 271E was to be made before 30.06.2011 and not 31.12.2011, as was the case.

8. Mr Bhatia, the learned counsel for the Revenue has drawn our attention to the decision of this Court in ***Pr Commissioner of Income Tax (Central-II), Delhi v. Thapar Homes Limited : 2023:DHC:7808-DB*** in respect of an appeal filed by the Revenue concerning the respondent/ Assessee in respect of AY 2008-09. In the said case also, though no date on



which the AO made reference to the ACIT/JCIT can be seen from the order, but it is noted that JCIT had issued notice pursuant to the reference on 13.06.2011 and the penalty order was passed on 30.12.2011, hence it was contended that the penalty order was beyond the period of limitation of six months, as is contemplated under Section 275(1) (c) of the Act. In the aforesaid background, this Court in paragraph no.16 onwards has stated as under:

*“16. It is based on the language of sub-section 2 of section 271E that Mr.Kumar argues that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the JCIT issued the notice.*

*16.1 Therefore, based on this line of argument, Mr Kumar says that the limitation in this case expired only on 31.12.2011, and since the penalty order was passed on 30.12.2011, it was within the prescribed period of limitation, as being the latter of the two dates, as indicated in Section 275 (1) (c) of the Act.*

*17. In our view, this argument, if accepted, would lead to absurdity, the reason being that once the appellant/revenue decides to trigger penalty proceedings against the respondent/assessee, it is incumbent upon them to keep an eye on the limitation period prescribed under Section 275 (1)(c) of the Act.*

*18. If the limitation period is connected to when the concerned officer issues notice, then the appellant/revenue can extend the period of limitation, way beyond the timeline prescribed in Section 275 (1)(c).*

*19. We are clearly of the view that the notice issued by the JCIT on 13.06.2011 could not have extended the period of limitation, as prescribed under Section 275 (1)(c) of the Act.*

*20. In this case, what is required to be brought to the forefront is that the AO had taken prior approval of the ACIT, who is equal in rank to the JCIT, before*



*triggering the penalty proceedings. Thus, although the decision to initiate penalty proceedings is found embedded in the assessment order dated 31.12.2010 and approval to frame the assessment order was given prior to the said date, the notice was issued only on 13.06.2011.*

*20.1 Even though this may be an additional factor in this particular case, our reasons for holding the limitation period as prescribed under Section 275 (1)(c) of the Act had expired latest by 30.06.2011, is not confined only to this aspect of the matter. The appellant/revenue, as noticed above, cannot extend the period of limitation by deciding at its whim and fancy when the notice has to be issued. The notice under Section 274 should have been issued before the period of limitation, as discussed above.”*

9. The facts in ***Pr Commissioner of Income Tax (Central-II), Delhi (supra)*** are identical to the case in hand. The conclusion drawn by this Court is that the limitation under Section 275(1)(c) of the Act had expired on 30.06.2011. The observation of this Court that the appellant / Revenue cannot extend the period of limitation by deciding at his whims and fancies when the notice has to be issued. In the case at hand, the reference having been only on 07.06.2011, surely a notice pursuant to the said reference would have been issued after 07.06.2011, which resulted in the penalty order dated 30.12.2011, hence in that regard, the issue is covered by the decision as referred to by Mr Bhatia, fairly which is, in favour of the respondent/ Assessee and against the Revenue.

10. Mr Bhatia has also referred to another decision in ***Property Plus Realtors v. Union of India & Others : 2025:DHC:454-DB*** wherein this Court was concerned with the facts wherein an assessment order dated



28.03.2024 was passed and the AO made a reference to the ACIT on 08.04.2024 for initiation of the penalty proceedings under Section 269ST of the Act read with Section 271DA of the Act. On 17.10.2024, the penalty order was passed by the ACIT. The limited question which fell for consideration before the Court was - whether the penalty order was beyond the period of limitation as prescribed under Section 275(1)(c) of the Act. This Court in paragraph no.16 onwards has held as under:-

*“16. We are not persuaded to accept the aforesaid contention. A plain language of Section 275(1)(c) of the Act indicates that the time limit for completion of the action for imposition of penalty is to be reckoned from:*

- (a) the end of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated are completed; or*
- (b) six months from the end of the month in which action for imposition of penalty is initiated, whichever expires later.*

*17. Undoubtedly in the present case, the proceedings during the course of which decision for that proceedings for levy of penalty under Section 269ST of the Act should be initiated, had taken place during the financial year 2023-24 as it is reflected in the assessment order dated 28.03.2024. However, the assessment order clearly reflects that the penalty proceedings are being initiated separately. The order records that “separate reference is being sent to the office of Addl. CIT-Central Range-04, Delhi for initiation of penalty proceedings U/s 269ST of the IT Act, 1961”. The AO has done so by making a reference on 08.04.2024. Thus, clearly the period of six months is required to be reckoned from the date of the reference, that is, from 08.04.2024 as that is the period which expires later than the end of the financial year in which*



*the proceedings, during the course of which the decision was taken to initiate the penalty proceedings, were completed.*

*18. Having stated the above, there is merit in the petitioner's contention that the date of initiation of the penalty proceedings cannot be extended arbitrarily and indefinitely. Clearly in cases where there is an inordinate delay in initiation of the proceedings, it would be necessary to examine whether the period of limitation would stand extended on account of such delay. It is settled law that in cases where no limitation period is mentioned for acts to be done, the same are required to be done within a reasonable period. (See **State of Punjab & Ors. vs. Bhatinda District Cooperative Milk Producers Union Ltd.:** (2007) 11 SCC 363).*

*19. Thus, in cases where the initiation of the penalty proceedings are inordinately and inexplicably delayed beyond a reasonable period, the said issue may rise for consideration. However, in the present case no such issue arises for consideration of this court as the penalty proceedings were initiated within a period of eleven days of the culmination of the assessment proceedings whereas the decision to make a reference for initiation of the penalty proceedings was taken. We are unable to accept that this period can be termed as unreasonable."*

11. The Court on finding that the delay of 11 days occurred between the period when the assessment order was passed and the notice was issued by the ACIT, being of 11 days and as such was not inordinate delay, still held that the same should have been passed within the six months from the date of reference, that is, 08.04.2024. The penalty order having been passed on 17.10.2024, which was within the period of six months from the date of reference, as such the Court has upheld the penalty order.



12. Suffice to state that the case is clearly distinguishable on facts.

13. We are of the view as the issue in hand is covered by the judgment in the case of *Pr Commissioner of Income Tax (Central-II), Delhi v. Thapar Homes Limited : 2023:DHC:7808-DB*, no substantial question of law arises to be decided in the present appeal. The appeal is dismissed against the Revenue and in favour of the Assessee.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**AUGUST 01, 2025**

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