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**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"A" BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND**
**SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

| ITA Nos.2631, 2633 to 2637/Bang/2018 |
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| Assessment Years : 2009-10 to 2011-12 |

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| The Deputy Commissioner of Income Tax,<br>Circle – 6(2)(1),<br>Bangalore. | Vs. | Shri. C. Gangadhara Murthy,<br>#322, 3rd A Cross, 2nd Block,<br>3rd Stage, Basaveshwaranagar,<br>Bangalore – 560 079.<br>**PAN : AGIPG 2668 N** |

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| Revenue by | : | Ms. Neera Malhotra, CIT(DR)(ITAT), Bangalore |
| Assessee by | : | Shri. V. Chandrashekar, Advocate |

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| Date of hearing | : | 17.09.2021 |
| Date of Pronouncement | : | 20.09.2021 |

**O R D E R**

***Per Bench:***

These are appeals by the Revenue against 6 orders all dated 28.6.2018 of CIT(A)-6, Bengaluru, relating to AY 2009-10 to 2011-12. The first set of 3 appeals relates to appeals arise out of imposition of penalty u/s.271E of the Act in relation to AY 2009-10 to 2011-12, while the second set of 3 appeals arise out of imposition of penalty u/s.271-D of the Act in relation to AY 2009-10 to 2011-12.

2. In terms of the provisions of Sec.269SS of the Act**, no person shall take or accept from any other person** (herein referred to as the 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, if,—

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(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

3. In terms of the provisions *of Sec.271-D of the Act, i*f 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.

4. In the case of the Assessee in the course of assessment proceedings for AY 2009-10 to 2011-12, the AO noticed that the Assessee had taken cash loans in violation of the provisions of Sec.269SS and hence penalty proceedings u/s.271-D were intiated in the Assessment orders for AY 2009-10 dated 03.11.2014 and for AY 2010-11 & 2011-12 by orders of assessments both dated 3.11.2014. By order dated 7.11.2014 for AY 2009-10 and orders dated 31.3.2015 for AY 2010-11 & 2011-12, orders imposing penalty were passed imposing penalty on the Assessee of a sum of Rs.6,38,00,000, 11,14,50,000 and 13,97,89,000 respectively for AY 2009-10 to 2011-12.

5. In terms of Sec.269T of the Act, no branch of a banking company or a co-operative bank and no other company or co-operative 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 has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account if—

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*(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon is twenty thousand rupees or more,, or*

*(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits is twenty thousand rupees or more,, or*

*(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances is twenty thousand rupees or more,*

6. For violation of the provisions of Sec.269T, penalty is provided in Sec.271E of the Act, which provides that ***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.***

**7.** In the case of the Assessee in the course of assessment proceedings for AY 2009-10 to 2011-12, the AO noticed that the Assessee had repaid cash loans in violation of the provisions of Sec.269T and hence penalty proceedings u/s.271-E were intiated in the Assessment orders for AY 2009-10 dated 3.11.2014 and for AY 2010-11 & 2011-12 by orders of assessments both dated 3.11.2014. By order dated 13.11.2014 for AY 2009-10 and orders dated 4.12.2015 for AY 2010-11 & 2011-12, orders imposing penalty were passed imposing penalty on the Assessee of a sum of Rs.7,26,00,000, 9,40,80,000 and 13,84,46,711/- respectively for AY 2009-10 to 2011-12.

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8. Against the aforesaid orders imposing penalty u/s.271D and 271E of the Act, the Assessee preferred six appeals before the CIT(A). The contention of the Assessee in the appeals before CIT(A) was that the assessment orders in which the penalty proceedings u/s.271D and 271E of the Act were initiated were quashed and hence the orders imposing penalty u/s.271D and 271E of the Act should also be quashed. The CIT(A) accepted the contention and quashed the orders imposing penalty by observing as follows:

> Order relating to penalty u/s.271E, the following were the observations of the CIT(A):
>
> 10. *Perusal of assessment orders for AYs 2009-10 to 2011-12 reveal that notices were issued for initiating penalty proceedings u/s 271E on 30/09/2014. It may be noted that assessment orders u/s 144 rws 147 were passed on 03/11/2014 in respect of AYs 2009-10 to 2011-12.*
> 11. *In this context, it is noted that initiation of Penalty Proceedings even before assessment proceedings were completed demonstrates that these were premature in nature. Further as the appellant states, it is impossible for the appellant to prove his case in penalty proceedings in the absence of reasonable opportunity being given during assessment proceedings, as the AO had already taken a view in the assessment proceedings that the appellant had violated provisions of section 271E.*
> 12. *The appellant's submission that assessment orders for AYs 2009-10, 2010-11 & 2011-12 have been found to be unsustainable in law in as much as the same were passed without following the due process of law, and that these penalty orders which stem out of the same assessments which had been nullified also ought to be quashed, is also seen to be reasonable.*
> 13. *In view of the fact that assessment orders for impugned assessment years have been found to be unsustainable in law and also in view of the fact that appellant had not been afforded sufficient opportunity to explain the nature of transaction and the nature of receipts during assessment proceedings, Penalty levied u/s 271E in respect of all three assessment years 2009-10, 2010-11 & 2011-12 are also found to be unsustainable in law and opposed to principles of natural justice.*
> 14. *In the result the assessee's appeals are allowed.*

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Order relating to penalty u/s.271E, the following were the observations of the CIT(A):

*"10. Perusal of assessment orders for AYs 2009-10 to 2011-12 reveal that notices were issued for initiating penalty proceedings u/s 271D on 30/09/2014. It may be noted that assessment orders u/s 144 rws 147 were passed on 0$^{3}/_{1}$1/2014 in respect of AYs 2009-10 to 2011-12 .*

*11. In this context, it is noted that initiation of Penalty Proceedings even before assessment proceedings are completed demonstrates that these were premature in nature. These facts also support the case of the appellal ft that he was not afforded reasonable opportunity during assessment stage to state his case. Further, as the appellant states, it is impossible for the appellant to prove his case in penalty proceedings, in the absence of reasonable opportunity being given in the assessment proceedings, as the AO had already taken a view that the appellant had violated provisions of section 271 D of the Act.*

*12. The appellant's submission that assessment orders for AYs 2009-10, 2010-11 & 2011-12 have been found to be unsustainable in law in as much as the same were passed without following the due process of law, and that these penalty orders which stem out of the same assessments orders which have been nullified also ought to be quashed, is also seen to be reasonable.*

*13. In view of the fact that the assessment orders for impugned assessment years have been found to be unsustainable in law, and also in view of the fact tilat appellant had not been afforded sufficient opportunity to explain the nature of transaction and nature of receipts during assessment proceedings, Penalty levied u/s 271D in respect of all three assessment years 2009-10, 2010-11 & 2011-12 are also found to be unsustainable and also opposed to principles of natural justice.*

*14. In the result the assessee's appeals are allowed."*

9. Aggrieved by the orders of the CIT(A), the Revenue is in appeal before the Tribunal. The grounds of appeal of the Revenue in so far as it relates to penalty u/s.271D reads thus:

1. *The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.*

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2. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the initiating the penalty proceedings before completion of assessment proceedings is premature in nature?*

3. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the appellant was not afforded reasonable opportunity during assessment stage to represent his case, overlooking the facts that the assessment order itself records more than eight opportunities to the assessee over a period of more than six months and that the assessee was given sufficient opportunity in the penalty proceedings?*

4. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the penalty order stems out of the corresponding nullified assessment order and that such penalty order stemming out of such nullified assessment order is also unsustainable, whereas, it is established law that penalty proceedings are independent of assessment proceedings.*

5. *On the facts and circumstances of the case, the Ld. CIT(A) is erred in omitting to recognize that the basis for the penalty u/s 271D is cash credits which are claimed by the assessee himself to be cash advances/repayments received on various accounts and it is the failure of the assessee to explain the same satisfactorily which has resulted the Range Head levying the penalty. The fact of cash advance received, which is in fact admitted by the assessee himself, and application of section 269SS thereto, does not; diluted by the fate of the assessment order.*

6. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*

7. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

The grounds of appeal of the Revenue in so far as it relates to penalty u/s.271E reads thus:

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1. *The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.*

2. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the initiating the penalty proceedings before completion of assessment proceedings is premature in nature?*

3. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the appellant was not afforded reasonable opportunity during assessment stage to represent his case, overlooking the facts that the assessment order itself records more than eight opportunities to the assessee over a period of more than six months and that the assessee was given sufficient opportunity in the penalty proceedings?*

4. *On the facts and circumstances of the case, whether the Ld CIT(A) is justified in holding that the penalty order stems out of the corresponding nullified assessment order and that such penalty order stemming out of such nullified assessment order is also unsustainable, whereas, it is established law that penalty proceedings are independent of assessment proceedings.*

5. *On the facts and circumstances of the case, the Ld. CIT(A) is erred in omitting to recognize that the basis for the penalty u/s 271E is cash repayments reflected by the assessee himself and it is the failure of the assessee to explain the same satisfactorily which has resulted the Range Head levying the pelanty. The fact of cash advance received, which is in fact admitted by the assessee himself, and application of section 269T*

6. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order Of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.*

7. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

10. We have heard the rival submissions. In our view the CIT(A) was not justified in cancelling the orders imposing penalty on the ground that the assessment proceedings in the course of which penalty was initiated have been held to be bad in law and annulled. It is admitted by the parties before us that the revenue is in appeal before the Tribunal against the orders of first appellate authority cancelling the assessment

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proceedings as invalid and those appeals are pending for consideration. For penalties pertaining to section 271(1) of the Act, there is a specific requirement that the AO, CIT(A), PCIT or CIT only can initiate the penalty proceedings in the course of any proceedings under the act. But, with regard to initiation of penalty under section 271D or 271E of the Act there is no such categorical requirement expressly provided in the Act.

11. In Commissioner of Income-tax vs. Hissaria Bros 291 ITR 244 (Raj), the assessee's contention was that the orders of penalty U/s.271D & E of the Act passed in each case for the assessment years 1993-94, 1994-95 and 1995-96 were barred by time in terms of Section 275(1)(c) was not accepted by the Assessing Officer as well as by the Commissioner of Income-tax (Appeals). The Tribunal found on the question of limitation that the order of penalty should have been passed within 6 months from the end of the month in which the assessment was completed. On this premise, it was held that since all the penalty orders were passed beyond 6 months from the end of the month in which assessments were completed the penalty orders were barred by time. It did not agree with the contention of the Revenue that the limitation for completing the penalty proceedings was governed by Section 275(1)(a) and not by Section 275(1)(c) because the assessment proceedings for each of the assessment years in question have been subjected to appeal. The Tribunal opined that since the penalty proceedings are independent of the assessment proceedings, the filing of the appeal against the assessment orders during the course of which penalty proceedings were initiated was irrelevant. On further appeal by the Revenue, the Hon'ble Rajasthan High Court held that penalty proceedings for default in not having transactions through the bank as required under Sections 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under Sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, Clause (a) of Sub-section (1) of Section 275 cannot be attracted to such

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proceedings. If that were not so Clause (c) of Section 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if Clause (a) was to be invoked, no necessity of Clause (c) would arise. The relevant discussion in this regard in the said judgment was as follows:

> *"23. Under the Income-tax Act, 1961 as originally enacted, no limitation was prescribed for completion of the penalty proceedings. However, considering that there should not be any inordinate delay in imposing penalty and to streamline the levy of penalty within reasonable time in the Act of 1961, Section 275 was enacted as a new provision for regularising imposition of penalty. It is pertinent to notice that if at the relevant time when the scheme for levy of penalty was enacted in the 1961 Act, the case in which the penalty was envisaged under Chapter XXI, the penalty proceedings were required to be initiated during the course of relevant assessment proceedings or its appellate proceedings by the appellate authority. Attention may be invited to the provisions contained in Sections 271 and 273 which were the principal provisions for imposing penalty. The simple provision which was enacted was that no order in this Chapter shall be passed after the expiration of two years from the completion of proceedings, in the course of which the proceedings for imposition of penalty have been commenced. Thus, the limitation for imposing penalty under Section 275 as originally enacted was directly linked with the completion of proceedings in the course of which the penalty proceedings were initiated in terms of Section 271 or Section 273 which were the principal provisions for imposing penalty under Chapter XXI. Since the initiation of penalty proceedings was linked with assessment proceedings and the orders in such assessments were subject to appeal, the findings in such proceedings ordinarily became the foundation for initiating proceedings for penalty and remained relevant evidence to reach a final conclusion in penalty proceedings which were otherwise independent. Where assessment proceedings in the course of which penalty proceedings were initiated became the subject-matter of appeal and there was modification or reversal of findings, it affected final result of penalty proceedings also.*

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*24. Section 275 was substituted by the Taxation Laws (Amendment) Act, 1970 which came into effect with effect from April 1, 1971. The change was explained by the Board vide circular 56 dated March 19, 1971. Significantly, it postulated that Section 275 of the Income-tax Act which specified the time-limit for completion of penalty proceedings has been substituted by a new section. Under the existing section, penalty proceedings for concealment of income or defaults in furnishing the return or accounts called for by notice or failure to pay advance tax on the taxpayer's own estimate, etc., are required to be completed within two years from the date of completion of the proceedings in the course of which the penalty proceedings were commenced. The operation of this time-limit has resulted in practical difficulties in cases where the Appellate Assistant Commissioner remands the appeal against the assessment for further enquiry by the Income-tax Officer or deletes or reduces the addition made on account of concealed income and the Department takes up the matter in further appeal before the Appellate Tribunal. Sometimes, a final decision on the quantum of the concealed income becomes available only after the expiry of the two-year time limit.*

*25. Section 275 as substituted aims at obviating difficulties in such cases, reducing avoidable work and avoiding hardship to the assessees. It provides that the time-limit for making an order imposing a penalty under the provisions of Chapter XXI of the Income-tax Act will, ordinarily, be two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. However, in a case where the relevant assessment or other order is the subject-matter of an appeal to the Appellate Assistant Commissioner or an appeal by the Income-tax Officer to the Appellate Tribunal, the time limit for completing the penalty proceedings will be either the two-years period as stated above or a period of six months from the end of the month in which the order of the Appellate Assistant Commissioner or, as the case may be, of the Appellate Tribunal is received by the Commissioner, whichever period expires later. It may be noted that the two year period will henceforth expire at the end of a financial year, instead of on different dates during the financial year, and the six month period will expire at the end of a calendar month. This facilitates the exercise of vigilance by the tax administration on the expiry of the limitation period and ensure that penalty proceedings are completed in all cases in time.*

*26. Secondly, the Direct Tax Laws (Amendment) Act, 1987 which came into effect with effect from April 1, 1989, Section 275 was amended. Vide amendment, the time limit for completion of penalty proceedings which was generally two years from the end of financial year in which such proceedings were completed or six months from the end of the month in which action for imposition for penalty was initiated, whichever period expired later.*

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*27. By these amendments, the three categories were made for applying limitation for completing the penalty proceedings taking into consideration the various penalty proceedings for default of certain provisions of the Income-tax Act which are not necessarily linked with proceedings for any particular assessment year in the course of which only penalty proceedings were required to be initiated. Such consequences of default were not linked with the principal assessment proceedings for any specific assessment year but were independent of it.*

*28. By substituting Section 275(1), which became operative from April 1, 1989, the provision divided cases for the purpose of prescribing limitation for completing penalty proceedings into three categories:*

*(i) Category I covers cases where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under Section 246 or with effect from June 1, 2000 Section 246A or an appeal to the Appellate Tribunal under Section 253;*

*(ii) Category II covers cases where the relevant assessment is the subject-matter of revision under Section 263 ; and*

*(iii) Category III covers all other cases not falling within Category I and Category II which is governed by Clause (c).*

*29. By dividing into three categories the period of limitation for cases falling under category (i) i.e. Clause (1)(a) is 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 the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner whichever period expires later.*

*30. The period of limitation for the cases falling under Category (II) is six months from the end of the month in which such order on revision is passed and the period of limitation for the cases falling under the above Category III is 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 the last category filing of appeal in respect of order passed in proceedings during which penalty proceedings were initiated is not relevant.*

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*31. To this effect, a Circular No. 551 dated January 23, 1990 see [1990] 183 ITR (St.) 7 and another Circular No. 554 dated February 13, 1990 (see [1990] 183 ITR (St.) 130) were issued by the Central Board of Direct Taxes.*

*32. A close scrutiny of Section 275 which reproduced hereinabove shows that Clause 1(a) covers those cases where the penalty proceedings are in respect of a default related to principal assessment for a particular assessment year and the penalty proceedings are required to be initiated in the course of that proceedings only. In such case where the relevant assessment order or other orders are the subject-matter of an appeal to the Commissioner (Appeals) under Section 246 or an appeal to the Appellate Tribunal under Section 253, 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 6 months from the end of the month in which the order of Commissioner (Appeals) or, as the case may be, of the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later.*

*33. Apparently, Clause (a) governs the categories which are integrally related to the assessment proceedings and are not independent of it.*

*34. We have also noticed that this provision was brought into effect in 1970 with effect from April 1, 1971, so that proceedings may not require rectification or modification depending on the outcome of the appeal against the orders passed in the relevant assessment proceedings or the other proceedings in the course of which the penalty proceedings are required to be initiated.*

*35. We have also noticed that Sections 271 and 273 were the two original penalty provisions, which require the penalty proceedings to be initiated during the course of relevant assessment proceedings or the other relevant proceedings as the case may be. The penalty proceedings could also be initiated during the appellate proceedings arising out of the relevant assessment proceedings. It is only where the assessment proceedings are independent and not directly linked to the assessment proceedings that the result of such proceedings in the course of which the penalty proceedings were initiated does not affect the levy of penalty. On such penalty proceedings, independent of the assessment proceedings Clause (c) 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.*

*36. 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 this type of cases where the penalty proceedings have been initiated in connection with the defaults for*

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*which no statutory mandate is there about any particular proceedings during the course of which only such penalty proceedings can be initiated, a different period of limitation has been prescribed under Clause (c) as a separate category. In cases falling under Clause (c) penalty proceedings are to be completed within 6 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. There is no provision under Clause (c) for the extended period of limitation commensurating with completion of the appellate proceedings if any arising from the proceedings during the course of which such penalty proceedings are initiated as in the case where the penalty proceedings are linked with the assessment proceedings or the other relevant proceedings.*

*37. The expression other relevant thing used in Section 275(1)(a) and Clause (b) of Sub-section (1) of Section 275 is significantly missing from Clause (c) of Section 275(1) to make out this distinction very clear.*

*38. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under Sections 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under Sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, Clause (a) of Sub-section (1) of Section 275 cannot be attracted to such proceedings. If that were not so Clause (c) of Section 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if Clause (a) was to be invoked, no necessity of Clause (c) would arise."*

12. On further appeal by the Revenue, the Hon'ble Supreme Court in CIT v. Hissaria Brothers (2016) 386 ITR 719 (SC) held dismissing the appeal:

*"On perusing the judgment of the High Court, it is found that penalty imposed on the respondent herein was also set aside on the ground that the provisions*

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

13. It is clear from the aforesaid pronouncement of the Hon'ble Supreme Court that in so far as imposition of penalty u/s.271D or 271E of the Act is concerned, those are independent proceedings and having nothing to do with assessment proceedings or its outcome. Therefore, the CIT(A) was not justified in cancelling the orders imposing penalty on the ground that the assessment proceedings, during the course of which, penalty u/s.271D and 271E of the Act were initiated have been held to be invalid. Apart from the fact that the order holding the assessments to be invalid has not become final, the CIT(A) ought not to have cancelled the orders imposing penalty on this ground. We therefore find merit in these appeals by the Revenue. Since, the CIT(A) has not adjudicated the matter on merits, the proper course would be to remit the question of imposition of penalty to the CIT(A) for fresh consideration, leaving all aspects open. The learned counsel for the Assessee made a prayer that the issue may be set aside to the AO but such request was opposed by the learned DR. In our view the matter has to be remanded only to CIT(A) because the AO has passed a speaking order on merits after considering the submissions of the Assessee.

14. In the result, the appeals are allowed for statistical purpose.

*Pronounced in the open court on the date mentioned on the caption page.*

| Sd/- | Sd/- |
|---|---|
| **(CHANDRA POOJARI)** | **( N. V. VASUDEVAN)** |
| **Accountant Member** | **Vice President** |

Bangalore.
Dated: 20.09.2021.
/NS/*

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Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.