

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI D BENCH, NEW DELHI
[Coram: I.C. Sudhir, JM and Pramod Kumar, AM]**

I.T.A. No.: 5443/Del/2013
Assessment year: 2005-06

Income Tax Officer,
Ward 4(2), New Delhi

.....**Appellant**

Vs.

JKD Capital & Finlease Ltd.,
14C, DDA Flats,
Mansarovar Park,
New Delhi. [PAN: AABCJ1581F]

.....**Respondent**

Appearances by:

P. Dam Kaunajma, for the appellant
Ashwani Taneja, for the respondent

Date of concluding the hearing: 29th January, 2015

Date of pronouncing the order: 27th March, 2015

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the Assessing Officer has challenged the correctness of the ld. CIT(A)'s order dated 22nd July, 2013, in the matter of penalty under section 271E of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act'*), for the assessment year 2005-06 on the following grounds :-

"1. Whether in the facts and circumstances of the case, the Ld CIT(A) erred in accepting the additional evidence under rule 46A when adequate opportunities were already provided to the assessee during the penalty proceedings ?

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) erred in concluding that penalty is barred by limitation whereas the limitation starts from the date of receipts of CIT(A) order in the CIT office,

which is 06.04.2010, therefore time barring limit for passing Penalty Order is 31.03.2012 ?

3. *Whether in the facts and circumstances of the case, the Ld. CIT(A) erred in treating the repayment as share capital instead of loans as held by AO and confirmed by Ld. CIT(A) in Quantum appeal ?*

4. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*

5. *That the grounds of appeal are without prejudice to each other."*

2. To adjudicate on this appeal, only a few material facts need to be taken note of. It is a case in which penalty proceedings under section 271E of the Act were initiated in the assessment order dated 28th December, 2007 but the penalty order was passed on 20th March, 2012. It is in this backdrop that the Ld. CIT(A) has quashed the penalty order by holding it as time barred. While doing so, learned CIT(A) has observed as follows :-

*"The Addl. CIT imposed the penalty u/s 271E vide order passed dated 20.03.2012 on a reference received from the AO, who initiated the penalty proceedings as per assessment order passed u/s 143(3) dated 28.12.2007, as is apparent from the last para of the assessment order. This action of the AO confirms that the impugned penalty u/s 271E was initiated on 28.12.2007. In the penalty order u/s 271E, in para 3 at first page, Additional CIT has stated that pursuant to the dismissal of the appeal the AO referred the matter regarding penalty u/s 271E, and the Addl. CIT issued show cause notice on 12.03.2012. Ld. A.R. referred me to the order passed by CIT(A) which has no relation with regard to initiation of penalty u/s 271E, and that order is passed entirely on different issue. The AO referred the penalty initiated u/s 271E of the Act to the Addl. CIT who was a competent authority to impose penalty as the penalty proceedings were initiated by the AO on 28.12.2007. Thus, in any case the penalty order should have been passed within the financial year itself in which the penalty proceedings were initiated or **within six months** from the end of the month in which the penalty proceedings were initiated, **whichever period expires later**, and in the present case the penalty order could have been passed on or before 30.06.2008. Therefore, the penalty order passed u/s 271E on*

20.03.2012 is **barred by limitation** and deserves to be quashed on this ground alone.”

3. The Assessing Officer is aggrieved of the relief so granted by the ld. CIT(A) and is in appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that the stand so taken by the learned CIT(A) in holding that the impugned penalty order is time barred on the ground that section 275(1)(c) of the Act will apply on the cases of penalty for violation of section 269SS, now stands approved by the Hon'ble jurisdictional High Court. In the case of CIT vs. Worldwide Township Projects Ltd (269 CTR 444), Their Lordships has, in this regard, held as follows :-

*“5. Concededly, if Section 275(1)(c) of the Act is applicable, the penalty order is beyond the prescribed period. In the present case, the penalty sought to be imposed on the assessee is for alleged violation of Section 269SS of the Act. It is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of Section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. In this view Section 275(1)(a) of the Act would not be applicable and the provisions of Section 275(1)(c) would be attracted. The Rajasthan High Court in the case of **Commissioner of Income-Tax v. Hissaria Bros.: (2007) 291 ITR 244 (Raj.)** after examining a case which was factually similar to the present one, expressed similar view and held as under:-*

“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.

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.

6. The ITAT, following the aforesaid decision allowed the appeal preferred by the assessee. We do not find any infirmity with this view."

6. In view of the above legal position, and respectfully following the decision of Hon'ble jurisdictional High Court, Learned CIT(A) rightly held that the penalty order passed by the Assessing Officer was barred by limitation as the penalty order was passed beyond six months from the end of the month in which penalty proceedings were initiated, while penalty proceedings were initiated in the month of December 2007 and the penalty order was thus required to be passed before 30th June, 2008, the penalty order was in fact passed on 20th March, 2012. In view of the settled legal position, as set out above, the date on which CIT(A) had passed order in the quantum proceedings had no relevance as it did not have any bearing on the issue of penalty. Learned CIT(A) was thus quite justified in his conclusions. As for the ground taken in respect of violation of Rule 46-A, we have noticed that learned CIT(A) has not decided

any factual aspects on merits nor has he admitted any additional evidence. In any event, no specific arguments were advanced in support of this grievance. What has been decided by the learned CIT(A) is a purely legal issue and his order is in consonance with the law laid down by Hon'ble jurisdictional High Court. We uphold the stand of the learned CIT(A) and decline to interfere in the matter.

7. In the result, appeal is dismissed. Pronounced in the open court today on 27th March, 2015.

Sd/-
I.C. Sudhir
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

New Delhi, the 27th day of March, 2015

Copies to:

<i>(1)</i>	<i>The appellant</i>
<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>Commissioner</i>
<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>Departmental Representative</i>
<i>(6)</i>	<i>Guard File</i>

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Delhi benches, New Delhi