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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.01.2025
Pronounced On	25.02.2025

Coram:**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.21087 of 2021
and W.M.P.No.22344 of 2021

Tvl.Chandro Process,
 Represented by its Partner Sri E.A.Arumugam,
 No.151/2, Thachankattupalayam,
 Arulpuram, Veerapandi Post,
 Tirupur – 641 605.

...Petitioner

Versus

- 1.The Deputy Commissioner of Income Tax,
 Office of the Deputy Commissioner of Income Tax,
 Circle – II,
 Tirupur.
- 2.The Joint Commissioner of Income Tax,
 National Faceless Assessment Centre,
 Delhi.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India
 praying for issuance of a writ of certiorari calling for the records on the files
 of the 2nd respondent in ITBA/PNL/F/271 D/2021-22/1034997626(1) dated
 19.08.2021 and quash the same as being without jurisdiction, authority of
 law and contrary to the principles of natural justice.



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W.P.No.21087 of 20_.

For Petitioner : Mr.T.Ramesh
for Mr.P.Rajavelu
For Respondents : Dr.B.Ramaswamy,
Senior Standing Counsel

ORDER

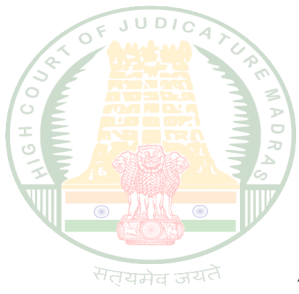
In this writ petition, petitioner has challenged the Penalty Order dated **19.08.2021** passed by the 2nd respondent under Section 271D of the Income Tax Act, 1961 (hereinafter referred to as "IT Act").

2. By the impugned order, the 2nd respondent has imposed a sum of Rs.34,00,000/- (Rupees Thirty Four Lakhs Only) as penalty under Section 271D of the IT Act, for the violation of Section 269SS of the IT Act.

Operative portion of the impugned Penalty Order reads as under:-

"7. The submission given by the assessee are given due consideration but found to be not acceptable. It was clearly mentioned in the assessment order that the assessee have taken loans amounting to Rs. 34,00,000/- in cash and the assessing officer has clearly recorded his findings that the loans were received in cash after making detailed enquiry. The contention of the assessee to keep the proceedings u/s 271D in abeyance cannot be accepted as the assessee has filed appeal for the quantum addition only. In the absence of any supporting documents explanation of the assessee is rejected. Therefore, in my opinion, the assessee has violated provision of section 269SS and hence liable to pay, by way of penalty a sum equal to the amount of the loan or deposit so taken or accepted. Accordingly, I hereby levy a penalty of Rs. 34,00,000/- (Rs. Thirty-four lakhs) u/s.271D of the Income Tax Act, 1961.

Demand notice and challan issued along with this order."



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3. The petitioner had suffered an Assessment Order dated **30.12.2019** for the Assessment Year 2017-2018 in the hands of the 1st respondent. The aforesaid Assessment Order was unsuccessfully challenged by the petitioner before this Court in W.P.No.2668 of 2020.

4. The said writ petition came to be dismissed on **05.02.2020** with a liberty to file an appeal against the Assessment Order dated **30.12.2019**, before the Commissioner of Income Tax (Appeals). The petitioner thus filed an appeal dated **25.02.2020** before the Commissioner of Income Tax (Appeals) (hereinafter referred to as “Appellate Commissioner”) in Form 35 under Section 246A of the IT Act.

5. The aforesaid appeal filed by the petitioner under Section 246A of the IT Act is said to be pending before the Appellate Commissioner as on date.

6. Pursuant to the aforesaid Assessment Order dated **30.12.2019**, the 2nd respondent issued Show Cause Notice dated **18.02.2020** under Section



274 r/w. Section 271D of the IT Act to the petitioner, to show cause as to why penalty should not be imposed on the petitioner under the aforesaid provisions of the IT Act for violation of Section 269SS of the said Act.

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7. Thereafter, the petitioner was served with a reminder dated **19.05.2021** and another Show Cause Notice dated **16.08.2021**, to which, the petitioner replied on **02.07.2021** & **19.08.2021**. However, on the very same date, the 2nd respondent has passed the impugned Penalty Order dated **19.08.2021** under Section 271 D of the IT Act.

8. The specific case of the petitioner is that the limitation period under Section 275(1)(c) of the IT Act had already expired for imposing the penalty under Section 271D of the said Act.

9. It is the case of the petitioner that the limitation period under Section 275(1)(c) of the IT Act for passing the impugned Penalty Order expired on **31.03.2020** i.e., at the end of the Financial Year in which the Assessment Order dated **30.12.2019** was passed and therefore, the impugned Penalty Order dated **19.08.2021** was without jurisdiction.



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10. Alternatively, it was submitted that even if the limitation period was to be computed from the date of issuance of the Show Cause Notice dated **18.02.2020**, the limitation period of six months from the end of the month in which the proceedings for passing the impugned Penalty Order were initiated i.e., from the date of issuance of Show Cause Notice on 18.02.2020, expired on **31.08.2020** in terms of Section 275(1)(c) of the IT Act, whereas the impugned Penalty Order has been passed on **19.08.2021**, i.e. beyond the period of limitation prescribed under the aforesaid provision.

11. It is also submitted by the learned counsel for the petitioner that the impugned Penalty Order has also been passed beyond the period of limitation as extended period of limitation under the provisions of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 as well as the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as “TOLA, 2020”).

12. It was further submitted by the learned counsel for the petitioner that the 2nd respondent should have awaited the order of the Appellate Commissioner in the appeal filed by the petitioner against the Assessment



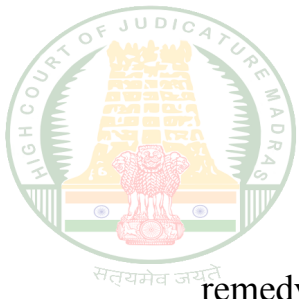
Order dated **30.12.2019**, before passing the impugned Penalty Order.

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13. On the other hand, the learned Senior Standing Counsel for the respondents submitted that since an appeal was filed by the petitioner against the **Assessment Order dated 30.12.2019**, the 2nd respondent was justified in passing the impugned **Penalty Order dated 19.08.2021** pursuant to the **Show Cause Notice dated 18.02.2020**.

14. The learned Senior Standing Counsel for the respondents further submitted that although the limitation period would have normally expired in terms of Section 275(1)(c) of the IT Act, the time limit to pass the impugned **Penalty Order dated 19.08.2021** stood extended due to promulgation of the Ordinance and enactment of TOLA, 2020.

15. It is therefore submitted by the learned Senior Standing Counsel for the respondents that the impugned Penalty Order passed on **19.08.2021** under Section 271D of the IT Act imposing a penalty of **Rs.34,00,000/-** on the petitioner does not warrant any interference under Article 226 of the Constitution of India at the instance of petitioner.



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16. That apart, it is submitted that the petitioner has an alternate remedy before the Appellate Commissioner and therefore, on this account, this writ petition is liable to be dismissed.

17. I have considered the arguments advanced by the learned counsel on either side and have also perused the records placed before this Court.

18. There is no dispute that the petitioner has suffered an adverse Assessment Order in the hands of the 1st respondent on **30.12.2019** for the **Assessment Year 2017-18**, against which, an appeal is said to be pending before the Appellate Commissioner as on the date of hearing.

19. The Show Cause Notice to impose penalty under Section 271D of the IT Act was issued to the petitioner on **18.02.2020** under Section 274 of the IT Act, to show cause as to why penalty should not be imposed on the petitioner for the violation of Section 269SS of the IT Act.

20. The said Show Cause Notice was issued before the end of the Financial Year 2019-2020 in which the relevant Assessment Order dated



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31.12.2019 was passed by the 1st respondent. It was also issued before an appeal was filed by the petitioner against the aforesaid Assessment Order dated **31.12.2019** before the Appellate Commissioner under Section 246A of the IT Act on **25.02.2020** pursuant to the dismissal of **W.P.No.2668 of 2020** on **05.02.2020** filed by the petitioner.

21. It is during the pendency of the aforesaid appeal against the Assessment Order dated **30.12.2019** before the Appellate Commissioner, the 2nd respondent has passed the impugned Penalty Order dated **19.08.2021**.

22. The contention of the petitioner during arguments is that the limitation period for imposing penalty under Section 271D of the IT Act expired after the expiry of the financial year in which the penalty proceedings has been initiated i.e., on 31.03.2020 or six months from the end of the month in which action for imposition of penalty is initiated i.e., 31.08.2020, whichever period expires later in terms of Section 275(1)(c) of the IT Act.



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23. On the other hand, it is the contention of the respondent that the limitation had not expired. Alternatively, it was also submitted by the petitioner that the impugned Penalty Order is premature. For the sake of clarity, Section 275 of the IT Act, is reproduced below:-

Section 275. Bar of limitation for imposing penalties.
<i>(1) No order imposing a penalty under this Chapter shall be passed-</i>
<i>(a) in a case where the relevant assessment or other order [is the subject-matter of an appeal to the Joint Commissioner (Appeals) or to the] Commissioner (Appeals) under section 246 or section 246A 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 six months from the end of the month in which the order of the 28-29[Joint Commissioner (Appeals) or the] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the 30[***]Principal Commissioner or Commissioner, whichever period expires later :</i>
<i>Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the 31[Joint Commissioner (Appeals) or to the] Commissioner (Appeals) under section 246 or section 246A, and 31[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of 31[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) is received by the 32[***] Principal Commissioner or Commissioner, whichever is later;</i>
<i>in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;</i>
<i>(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</i>



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.

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(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal ³³[to the Joint Commissioner (Appeals) or] to the Commissioner (Appeals) under [section 246](#) or [section 246A](#) or an appeal to the Appellate Tribunal under [section 253](#) or an appeal to the High Court under [section 260A](#) or an appeal to the Supreme Court under [section 261](#) or revision under [section 263](#) or [section 264](#) and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of ³³[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the ³⁴[***] Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of ³³[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under [section 263](#) or [section 264](#):

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

- (a) *unless the assessee has been heard, or has been given a reasonable opportunity of being heard;*
- (b) *after the expiry of six months from the end of the month in which the order of ^{34a}[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the ^{34b}[***] Principal Commissioner or Commissioner or the order of revision under [section 263](#) or [section 264](#) is passed:*

Provided further that the provisions of sub-section (2) of [section 274](#) shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.

(2) *The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty*



on or before the 31st day of March, 1989.

Explanation.—In computing the period of limitation for the purposes of this section,—

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#);
- (ii) any period during which the immunity granted under [section 245H](#) remained in force; and
- (iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.

24. Although not cited, it will be useful to refer to a decision of the Division Bench of the Rajasthan High Court in ***Commissioner of Income Tax Vs. Hissaria Bros (2007) 291 ITR 244***. The said decision has also been affirmed by the Hon'ble Supreme Court in ***Commissioner of Income Tax Vs. Hissaria Bros (2016) 386 ITR 719***.

25. The decision of the Rajasthan High Court in ***Commissioner of Income Tax Vs. Hissaria Bros (2007) 291 ITR 244*** has also been followed by another Division Bench of the Delhi High Court in ***Principal Commissioner of Income Tax Vs. JKD Capital & Finlease Ltd., 2015 SCC OnLine Del 12836***.



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26. If the above decision(s) are applied to the facts of the present case, without proper examination, the contention of the petitioner that the impugned Penalty Order dated 19.08.2021 was beyond limitation has to be accepted.

27. In *Commissioner of Income Tax Vs. Hissaria Bros (2007) 291*

ITR 244, the Court had framed following questions of laws:-

“1. Whether, on the fact and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that the penalty proceedings and the order passed by the Joint Commissioner of Income-tax under Section 271D are vitiated being time-barred by virtue of the provisions of Section 275(1)(c) of the Act held to be applicable whereas the case of the assessee is covered under Section 275(1)(a) of the Act since the penalty proceedings pertained to the assessment order under appeal and Section 275(1)(c) was not applicable to it ?

2. Whether, on the facts and in the circumstances of the case the notice issued for initiating penalty proceedings and the penalty order passed pursuant thereto by the Joint Commissioner of Income-tax in accordance with the provisions of Section 271D(2) of the Act was bad and unlawful though passed within limitation?

3. Whether, on the facts and in the circumstances of the case, the Assessing Officer was empowered to initiate proceedings and pass penalty order under Section 271D of the Act for the reason of issuing show cause to the assessee for referring the matter to the Joint Commissioner who else was empowered to impose penalty under Section 271D(2) of the Act?

4. Whether, on the facts and in the circumstances of the case the Income-tax Appellate Tribunal was justified in holding that the assessee acted under bona fide belief and did have reasonable and sufficient cause as provided under Section 271D of the Act on account of precedence and trade practice allegedly amounting to res judicata?”



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28. The assessee there acted as “Kachcha Arhatiya” i.e., as an agent for its farmer constituents who used to bring their crops to the assessee for sale and the assessee in this relationship used to sell their crops and retained the profits from the sale of the crops. The assessee also accepted cash deposits from the farmer constituents, creating fund accumulation for each of the farmers and adjusts the same towards supply of goods like fertilizers, seeds, pesticides etc., and other withdrawals made by the framers constituents for the purpose of meeting their timely needs, thus, catering to farmer constituents.

29. As an agent, the assessee collected, sold the crops, and managed proceeds and adjusted withdrawals for the farmers' needs. The transactions carried out by a “Kachcha Arhatiya” are said to be integral to agricultural supply chains, especially, in rural areas where banking facilities may be limited.

30. The Court in the aforesaid case underscored the relevance of the

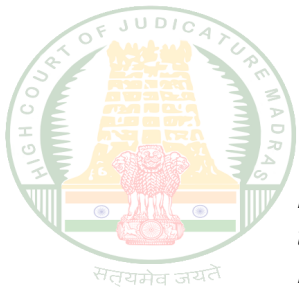


CBDT circular in interpreting the nature of transactions undertaken by assessee, viz., **Hissaria Bros**, in the capacity of a “Kachcha Arhatiya”.

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31. In view of the circular which clarified that such transactions do not constitute as 'deposit' or 'repayment of deposit or loan', the Court acknowledged the assessee's reasonable cause, rooted in the trade practices and the operational necessities of serving agriculturists in rural areas, which justified the non-compliance with mandated banking transactions, thereby nullifying the basis for penalties under Sections 269SS and 269T of the IT Act. For the sake of clarity, Paragraph No.11 of the aforesaid decision of the Rajasthan High Court is reproduced below:-

“11. Apart from finding the penalty orders barred by time under section 275(1)(c), on the merits of the case, the Tribunal found the credits in the assessment year 1993-94 to be genuine as has been contended by the authorised representative of the assessee. Besides the returns of the assessment years 1993-94 and 1994-95 were filed much earlier to the date of search, based on books of account which were complete and closed and considering the Central Board of Direct Taxes circular which explained that where a kachha arhatiya sells goods belonging to agriculturists, the sale proceeds thereof which remain with him cannot be regarded as deposit made by the agriculturist with the kachha arhatiya. Further, where the kacha arhatiya remits only a part of the sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269T of the Act, it came to the conclusion that to the facts of the present case, the circular of the Board aptly applies. Therefore, the



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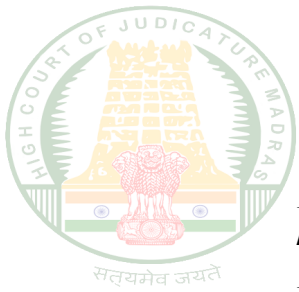
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money received by the assessee as kachcha arhatiya as sale proceeds of the agricultural produce received from his constituents and retained by him cannot be considered deposits. Consequently its remittance in part or full to the constituents or its utilisation by such constituents also does not fall within the purview of repayment of such deposits within the meaning of section 269T. Coupled with this finding of fact about all transactions to be genuine and bona fide, looking to the practice prevailing and requirements of the farmers, the Tribunal was also of the opinion that the assessee had reasonable and sufficient cause for not complying with sections 269SS and 269T even if the same were to be considered as deposit and repayment of deposits. About the additions sustained by the Commissioner of Income-tax (Appeals) in respect of alleged cash credit, the Tribunal found such transaction to be not outside the purview of the transactions carried out by the assessee as kachcha adhatiya. Hence, the penalty sustained by the Commissioner of Income-tax (Appeals) was also set aside.”

32. Although, in the aforesaid decision, the Court made a reference to a CBDT Circular, the particulars of Circular was not mentioned therein. However, on a reading of the order of the Tribunal in ***Hissaria Bros Vs. CIT (2001) 73 TTJ (NULL)1*** which was impugned before the said Court, it was discerned that reference was to **CBDT Circular No. 556 dated 23.02.1990.**

33. Relevant portions of the said Circular No. 556 dated 23.02.1990 issued by Central Board of Direct Taxes is reproduced below:

“Circular: No. 556, dated 23-2-1990.



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1277. Clarification regarding applicability of section 269T to amounts kept by agriculturists out of sale proceeds with commission agents

1. Section 269T of the Income-tax Act provides that no company, co-operative society or firm shall repay to any person any deposit otherwise than by any account payee cheque or account payee bank draft where the amount of deposit and interest thereon, if any, is Rs. 10,000 or more.

2. The Direct Tax Laws (Amendment) Act, 1987 has amended the definition of "deposit" for the purpose of section 269T of the Income-tax Act. Under the amended definition, the said term has been defined to mean "any deposit of money which is repayable after notice or repayable after a period and, in case of a person other than a company, includes deposit of any nature".

(The italicised portion has been added by the said Amendment Act.)

3. A number of references have been received by the Board seeking clarification whether the sale proceeds of agricultural commodities, left over by the agriculturists with their 'Kachcha Arhatiyas', would also come within the ambit of deposit of any nature necessitating its payment by an account payee cheque as provided under section 269T of the Act.

4. The Board is of opinion that where a 'Kachcha Arhatiya' sells goods belonging to an agriculturist, the sale proceeds thereof which remain with him cannot be regarded as a deposit made by the agriculturists with the 'Kachcha Arhatiya'. Further, whether the 'Kachcha Arhatiya' remits only a part of the sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269T of the Act.

5. However, such unremitted sale proceeds would assume the character of a deposit if the amount is retained by the 'Kachcha Arhatiya' in pursuance of a direction in this regard by the agriculturist, irrespective of whether the amount is retained in the same account or transferred to different accounts and irrespective of whether the directions are to call it a deposit or just to retain the same for future payment. The repayment in such cases will be covered under section 269T of the Act."

34. The Court held that the Assessing Authorities were bound by the general instructions contained in the above Circular of CBDT insofar as the nature of the dealings of "Kachcha Arhatiya" on behalf of his constituents

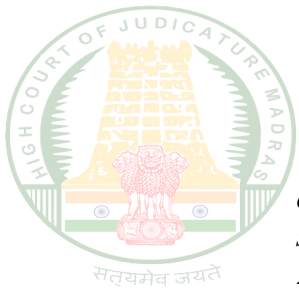


and cannot be considered as 'deposit' or 'repayment of deposit or loan', as found by the Assessing Officer himself.

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35. It further held that hardly any occasion arose for invoking Section 269SS or 269T of the IT Act, even on the purported commission received by the assessee to comply with the requirements of the aforesaid provision for inviting penalty under section 271D and 271E of the IT Act. For the sake of clarity, Paragraph No.15 of the above decision is reproduced below:-

“15. Ordinarily, whether there exists a reasonable cause for the assessee's failure to comply with the provision of sections 269SS and 269T inviting levy of penalty under sections 271D and 271E respectively and his absolution from penalty on account of existence of reasonable cause is a question of fact and it does not give rise to a question of law. Apparently, in the facts and circumstances of the case taken on the facts of each case no straight-jacket formula can be laid down for the purpose of determining a question of law what is reasonable and sufficient cause. The only thing is that no person of ordinary prudence can come to such a conclusion other than a finding about absence or existence of reasonableness can be considered vitiated. It is not the case here. Moreover, we are of the opinion that in view of clear instructions of the Central Board of Direct Taxes relating to the transaction of the nature in which the assessee has indulged as kachcha adhatiya on behalf of his constituents referred to herein and in the order of the Tribunal is not to be considered as a deposit when the money is retained by the kachcha adhatiya for remitting to the constituents and subsequent remittance or adjustment of such amount by discharging obligation of his constituents or remittance of such amount to the constituents are not considered to be repayment of the deposits or loan. The assessing authorities were bound by the general instructions contained in the circular issued by the Board so far as the dealings of kachcha adhatiya of the nature found by the Assessing Officer himself in the present case. Therefore, there was hardly any occasion for invoking sections 269SS and 269T on the supposed



omission on the part of the assessee to comply with the requirement of the said provisions for inviting application of penalty provisions of sections 271D and 271E.”

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36. The Court in the aforesaid decision had also held that although the requirement of transacting through bank was not met as was required under Section 269SS and Section 269T of the IT Act by the assessee therein, the penalty proceedings for such default were not related to the assessment proceeding but was independent of it. Therefore, the Court held that the limitation period for passing Penalty Order under the provisions of IT Act, was under Section 275(1)(c) of the IT Act.

37. The Court in the above decision further concluded that imposition of penalty arising out of assessment proceedings or other proceedings during which penalty proceedings under Section 271D and Section 271E of the IT Act were initiated had no relevance either for sustaining or for not sustaining the penalty proceedings and therefore, clause (a) of sub-section (1) of Section 275 of the IT Act was not attracted to such proceedings.



38. Relevant portion from the decision of the Rajasthan High Court

reads as under:-

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“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 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.”



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39. Although, the above conclusion in Paragraph Nos.32 to 38 were arrived, it has to be noted that the Court had already concluded that the penalty proceedings against the assessee were not justified in the facts of the said case, in the light of CBDT Circular No.556 dated 23.02.1990 issued by the Central Board of Direct Taxes which clarified that the transactions of this nature, in which the assessee had indulged in, under the capacity of “Kachcha Arhatiya”, on behalf of the farmer constituents, did not attract the sting under Section 269SS and Section 269T of the IT Act.

40. In this connection, the following paragraphs from the said decision are reproduced below:-

“17. Even assuming that the provisions of Sections 269SS and 269T could be invoked in the present case in the facts and circumstances, the findings of the Tribunal that reasonable cause existed for the assessee which resulted in failure to comply with the provisions of Sections 269SS and 270T are findings of fact which do not give rise to any question of law. In the aforesaid view of the matter, penalty under Sections 271D and 271E was not imposable substantively and was rightly set aside by the Tribunal.

18. In view of the above finding in which in our opinion the Tribunal was right and which is not also under challenge by the Revenue that the present transactions were governed by the Central Board of Direct Taxes circular referred to above and did not invite the provisions of Sections 269SS and 269T and consequently no penalty was imposable under Sections 271E and 271D, now we propose to examine the issue involved in question No.1. ”



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41. The above observation was made by the Court in the context of Question No.4, framed by the Court in the aforesaid decision which was first answered. The decision in the above Paragraph Nos.17 to 18 is the *ratio decidendi* of the Rajasthan High Court in the aforesaid case. The observations contained in these subsequent paragraphs were on a demurrer and therefore, the conclusions cannot be said to be *ratio decidendi*. They are merely the *obiter dicta* of the aforesaid decision.

42. Additionally, the Court also considered previous rulings and interpretations related to Section 275 of the IT Act which governs the limitation period for imposing penalties. This is clearly contrary to the *contemporenea expositio* of law in Circular No.56 dated 19.03.1971 which was also referred to by the Court in the above case.

43. However, the Court has ignored the true purport of the above circular issued in the context of the limitation period under Section 275(1)(a) of the IT Act. Though the Court in Paragraph No.24 made a specific reference to Circular No.56 dated 19.03.1971 issued by Central



Board of Direct Taxes, it has ignored Paragraph No.33 of the said Circular.

Relevant portions of the said Circular are reproduced below:-

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“TAXATION LAWS (AMENDMENT) ACT, 1970

CIRCULAR NO. 56, DATED 19-3-1971

.....

AMENDMENTS TO INCOME-TAX ACT

STREAMLINING THE ASSESSMENT PROCEDURE, INCLUDING PROCEDURE AND TIME LIMITS FOR GRANT OF REFUNDS AND IMPOSITION OF PENALTIES, AND CONNECTED MATTERS, SO AS TO ACHIEVE EXPEDITIOUS DISPOSAL OF WORK AND SECURING BETTER VOLUNTARY COMPLIANCE BY TAXPAYERS WITH THE TAX LAWS

.....

Streamlining of provisions relating to imposition of penalties

28.

29.

31. ...

32. *Time limit for completion of penalty proceedings - Section 275 which specifies 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.*

33. *Section 275, as substituted, aims at obviating difficulties in such cases, reducing infructuous work and avoiding hardship to assesseees.*



*Under the section as substituted, the time limit for making an order imposing a penalty under the provisions of Chapter XXI 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 proceeding will be either the two-year 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 at present, and the six-month period will expire at the end of a calendar month. This will facilitate 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 good time.*

The Explanation to section 275 - which provides that the time taken in rehearing the assessee (due to change in the incumbent of the office of Income-tax Officer, Inspecting Assistant Commissioner or Appellate Assistant Commissioner having jurisdiction) and any period during which the penalty proceedings have been stayed by an order of the court, will be excluded in computing the period of limitation - has been retained.

34. The amendment of section 275 will come into effect from 1-4-1971. Accordingly, the revised time limit will apply to penalty proceedings commenced on or after that date as also to penalty proceedings commenced before that date and pending on 1-4-1971, provided the period of limitation specified in the existing provisions of section 275 has not already expired.

[Section 50 of the Amending Act]”

44. The observations made in the context of Question No.1 framed by the said Court in the aforesaid decision in Paragraph Nos.32 to 38 was merely an *obiter dicta* and not a *ratio decidendi* and therefore, not binding on Courts. The said decision of the Court is *per incurriam* as it has ignored



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the express language of Section 275 of the IT Act. I am therefore unable to

subscribe to be view of the Hon'ble Division Bench of the Rajasthan High Court in Paragraph Nos.32 to 38 of the above case. Therefore, I propose to dispel the confusion that has arisen out of the above decisions.

45. Since the Income Tax Department was aggrieved by the decision of the Division Bench of the Rajasthan High Court, it filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court however confirmed the view of the Division Bench of the Rajasthan High Court on the ground of limitation prescribed under Section 275 of the IT Act.

46. The attention of the Hon'ble Supreme Court was not brought to that portion of the decision of the Division Bench of the Rajasthan High Court which had allowed the contention of the assessee that the practice adopted was in line with Circular No. 556, dated 23.02.1990 of the Central Board of Direct Taxes. Similary, attention of the Hon'ble Supreme Court was not brought to the express views of the Central Board of Direct Taxes in Circular No.56 dated 19.03.1971.



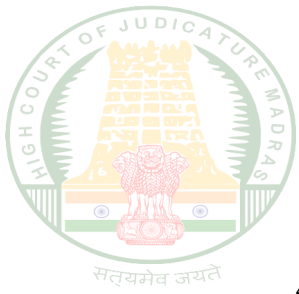
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47. Thus, the decision in ***Commissioner of Income Tax Vs. Hissaria Bros (2016) 386 ITR 719*** which was passed upholding the *obiter dicta* of the Division Bench of the Rajasthan High Court in ***Commissioner of Income Tax Vs. Hissaria Bros (2007) 291 ITR 244*** without clear discussion on Section 275(1) of the IT Act, cannot be said to have a binding precedential value.

48. A plain reading of Section 275(1)(a) of the IT Act also makes it clear that an order imposing a penalty under Chapter XXI of the IT Act, has to be passed on, later of the either two of the dates:-

(a) Either before the end of the financial year in which the relevant Assessment Order has been passed where an appeal is pending against the aforesaid order before the specified Appellate Authority; or

(b) Within a period six months from the end of the month of the receipt of the order of the Appellate Authority by the Principal Commissioner or Commissioner, where an appeal is pending or ordered against the aforesaid order before the specified Appellate Authority



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49. However, the limitation period gets extended for a period of one year from the end of the month of the receipt of such order of the Appellate Authority by the Principal Commissioner or Commissioner, in terms of *provisio* to Section 275(1)(a) of IT Act. This will be also in tune with Circular No. 56 dated 19.03.1971 issued by Central Board of Direct Taxes.

50. In terms of Section 275 of the IT Act, if the Penalty Order under Chapter XXI of the IT Act was to be passed before the end of the financial year, as in (a) of Paragraph No.48 of this order, it ought to have been passed on or before **31.03.2020** in the present case.

51. In case, Penalty Order is not passed before the end of the Financial year in which the Assessment Order was passed, it has to be deferred till the Appellate Authority passes an appellate order in an appeal filed against the relevant Assessment Order. The Penalty Order has to be passed within a period of one year from the end of the month of the receipt of the order of the Appellate Authority, by the Principal Commissioner or



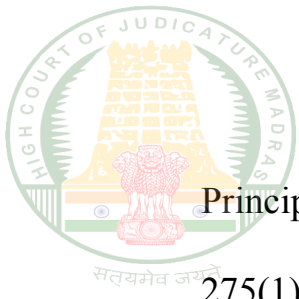
Commissioner, provided such an appeal is filed as in (b) of Paragraph

No.48 of this order.

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52. In fact, in taxing matters, Courts are expected to apply the plain language. In this connection, the famous dictum of the Kings Bench in ***Cape Brandy Syndicate Vs. IRC (1921) 1 KB 64*** is relevant. There, Rowlatt J famously observed “There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied.” This view has also been accepted by the Hon'ble Supreme Court. In fact, Rules of Interpretation can be invoked only in cases where there is ambiguity in the provisions. Where the provisions are without any ambiguity, question of invocation of the Rules of Interpretation itself was misplaced.

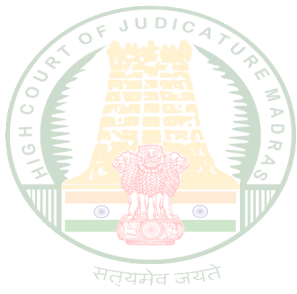
53. In the present case, the order by the Appellate Commissioner has not yet been passed. Therefore, ordinarily, passing of impugned Penalty Order should have awaited the aforesaid period of one year from the end of the month of the receipt of the order of the Appellate Authority by the



Principal Commissioner or Commissioner in terms of proviso to Section 275(1)(a) of IT Act. However, there are extenuating circumstances which impells the Court to conclude that the impugned Penalty Order was passed in time. The reasons shall be stated in the succeeding paragraphs.

54. Only, if no appeal was filed agaisnt the Assesment Order, a Penalty Order has to be passed before the end of the financial year in which the Assessment Order was passed or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. Only under these circumstances, limitation period under Section 275(1)(c) of the IT Act would be relevant.

55. In ***Rayala Corporation P. Ltd. Vs. Union of India (2007) 288 ITR 452 (Mad)***, this Court has also held that in a case where an appeal is pending before the Tribunal, the limitation period for levy of penalty can only be as provided for under Section 275(1)(a), i.e., 6 months from the end of the month in which the order of the Tribunal is received by the Commissioner. The Court held as under:-



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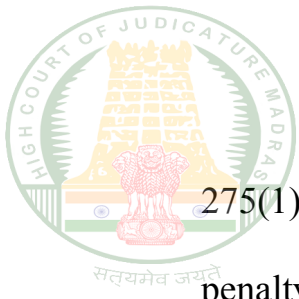


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*"A reading of the abovesaid provision makes it clear that the interpretation placed by learned counsel for the petitioner on the said provision is acceptable. **There is no dispute in this case that the petitioner has filed an appeal before the Tribunal and the same is pending. In such a case, the limitation period for the levy of penalty will be as provided for under section 275(1)(a), i.e., six months from the end of the month in which the order of the Appellate Tribunal is received by the Chief Commissioner. There cannot be any doubt on this aspect. Accordingly, this court is of the view that the proviso to section 275(1)(a) of the Act, does not nullify the availability to the third respondent of the period of limitation of six months from the end of the month when the order of the Income-tax Appellate Tribunal, Chennai, is received by the third respondent herein.**"*

56. Though, I am in agreement with the *ratio* of the Court in the above decision, it has to be mentioned that the Court had failed to take note of *provisio* to Section 275(1)(a) of the IT Act which was inserted by the Finance Act, 2003 w.e.f. 01.06.2003. There, the Assessment Order which gave rise to the penalty proceeding was dated 29.03.2004. Therefore, the limitation period should have been reconciled in terms of proviso to Section 275(1)(a) of the IT Act. In the present case also the limitation period should have been reconciled in terms of proviso to Section 275(1)(a) of the IT Act.

57. Limitation period under Section 275(1)(c) of the IT Act is not applicable to the facts of the present case. Limitation period under Section



275(1)(c) r/w. Section 274 of the IT Act for the purpose of imposition of penalty under Section 271D of the IT Act would apply only to those situation which are not specified in Section 275(1)(a) of the IT Act. This would be in harmony with the sub clause (a), (b) and (c) to Section 275(1) of the IT Act and would be without any violation of the scheme of limitation in Section 275 of the IT Act.

58. That apart, Section 275(1)(a) of the IT Act, is a special provision. It is specifically devised to deal with a situation where an Assessment Order or other Order is the subject matter of an appeal. On the other hand, Section 275(1)(c) of the IT Act is a residuary provision. Even if, the latin maxims: *Generalia specialibus non derogant* is applied, the limitation period prescribed in Section 275(1)(c) of the IT Act will not apply under the present circumstances as it is applicable only “**in any other cases**”.

59. The above interpretation was also adopted earlier by this Court in *J.Srinivasan Vs. The Assistant Commissioner of Income Tax (2018) 404 ITR 51*. That apart, on facts also, it is clear that the Assessment Order dated



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30.12.2019 has clearly stated that the penalty proceedings under Section 271D r/w. Section 274 of the IT Act will be separately initiated for violation of Section 269SS of the IT Act which led to inclusion of the amount into the taxable income of the petitioner.

60. As mentioned earlier, the last date for passing the order in the first instance was **31.03.2020**. However, the said date would have been saved, in the light of the decision of the Hon'ble Supreme Court vide order dated 24.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 which relaxed the period of limitation in the wake of outbreak of COVID-19 Pandemic and lockdowns imposed. Thereafter, the limitation was extended by successive orders of the Hon'ble Supreme Court as the pandemic did not recede which led to subsequent complete and intermittent lock-downs from time to time.

61. Extension of limitation period was also stipulated under notifications issued under TOLA Ordinance, 2020 dated 31.03.2020 which was later replaced by the TOLA, 2020 w.e.f. 29.09.2020. In this



connection, it would be relevant to refer to Section 3(1)(a) of TOLA, 2020

which is reproduced below:-

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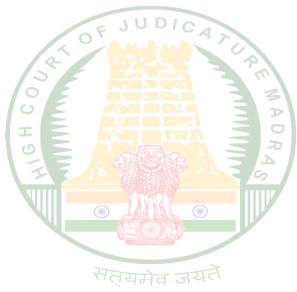
“ Section 3(1):

*Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which **falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020**, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as –*

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act;”

62. The Government of India in the Ministry of Finance, (Department of Revenue) has issued the following notifications under Section 3(1) of the TOLA, 2020 extending the period of limitation for passing various order including the Penalty Order under Chapter XXI of the IT Act. The details of the notifications issued are as under:-

Sl.No.	Notifications No./Statute	Date of the Notifications / Act	Relevant Period	Last Date after extension
1	93/2020	31.12.2020	30.03.2020 to 30.03.2021	31.03.2021
2	10/2021	27.02.2021	30.03.2020 to 29.06.2021	30.06.2021
3	74/2021	25.06.2021	30.03.2020 to 29.09.2021	30.09.2021
4	113/2021	17.09.2021	30.03.2020 to 30.03.2022	31.03.2022



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63. Clause A of the Notification No.113/2021 in S.O.3814(E) dated 17.09.2021 is relevant for this case which is extracted hereunder:-

“(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for imposition of penalty under Chapter XXI of the Income-tax Act, —

(i) the 30th day of March, 2022 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 31st day of March, 2022 shall be the end date to which the time-limit for completion of such action shall stand extended;

(b) the compliance of any action, referred to in clause (b) of sub-section (1) of section 3 of the said Act, relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for such the compliance of such action shall stand extended to the 31st day of March, 2022”

64. Thus, it is evident that period of limitation to pass order(s) stood extended from time to time. Therefore, the limitation prescribed under Section 275(1)(a) of the IT Act which would have otherwise expired during the period between **30.03.2020** and **30.03.2022** stood extended till **31.03.2022** in view of Clause A of the Notification No. 113/2021 in S.O.3814(E) dated 17.09.2021 issued under Section 3(1)(a) of TOLA, 2020.

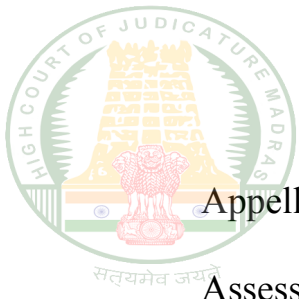
65. In the light of the above discussion, the argument of the



petitioner that the limitation for passing the impugned Penalty Order under Section 271D of the IT Act was to be reconciled in terms of the limitation period prescribed under Section 275(1)(c) of the IT Act has to be held without merits.

66. That apart, the arguments that the respondents should have awaited for the order of Appellate Commissioner in the appeal filed against the Assessment Order and that, the impugned Penalty Order is premature, is also of no solace as limitation stood extended till **31.03.2022** in view of Clause A of the Notification No.113/2021 dated 17.09.2021. Since the impugned Penalty Order was passed on **19.08.2021**, it has to be held that it has been passed well before the extended period of limitation in terms of the above Notification.

67. Given that the impugned Penalty Order has been passed before the expiry of the limitation period, it can be revised after the appeal is disposed by the Appellate Authority against the Assessment Order dated **30.12.2019**, in terms of Section 275(1A) of the IT Act. Therefore, the impugned order imposing penalty is not required to await the order of the



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Appellate Authority in the appeal filed by the petitioner against the Assessment Order dated 30.12.2019. By the same token, it cannot be also said that the impugned Penalty Order is premature.

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68. Consequently, this Writ Petition has to fail. At best, liberty can be given to the petitioner to challenge the impugned Penalty Order on merits before the Appellate Commissioner.

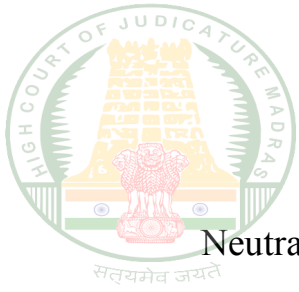
69. In view of the above discussion, this Writ Petition is dismissed with liberty to the petitioner to challenge the impugned Penalty Order dated 19.08.2021 by way of filing an appeal before the Appellate Commissioner under Section 246A of the IT Act, within a period of 30 days from the date of receipt of a copy of this order. On filing of such appeal by the petitioner, the Appellate Commissioner shall dispose of the same on merits alone. No costs. Consequently, connected miscellaneous petition is closed.

25.02.2025

arb/mrr

Index : Yes

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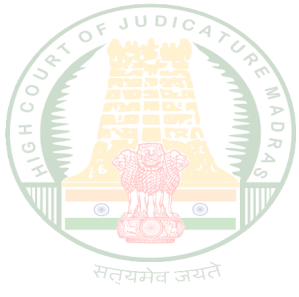
W.P.No.21087 of 20__.

Neutral Citation : Yes

WEB COPY Speaking Order (or) Non-Speaking Order

To:

- 1.The Deputy Commissioner of Income Tax,
Office of the Deputy Commissioner of Income Tax,
Circle – II,
Tirupur.
- 2.The Joint Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi.



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W.P.No.21087 of 2021.

C.SARAVANAN, J.

arb/mrr

**Pre-Delivery Order in
W.P.No.21087 of 2021**

25.02.2025