

आयकर अपीलिय अधिकरण "E" न्यायपीठ मुंबई में।  
 IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIVEK VARMA, JM**

आयकर अपील सं./I.T.A. No.476/M/2014 (AY 2009-10)

आयकर अपील सं./I.T.A. No.481/M/2014 (AY 2009-10)

<b>Lodha Builders Pvt Ltd,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AAACL1722F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.475/M/2014 (AY 2009-10)

<b>Lodha Properties Development Pvt Ltd,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AABCL2222K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.477/M/2014 (AY 2009-10)

<b>Aasthavinayak Real Estate Private Limited,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AAGCA 2860B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.478/M/2014 (AY 2009-10)

<b>Aadinath Builders Pvt Ltd,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AAFCA 9028 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

## आयकर अपील सं./I.T.A. No.479/M/2014 (AY 2009-10)

<b>Ajitnath Hi-Tech Builders Pvt Ltd.,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AAGCA 1122 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

## आयकर अपील सं./I.T.A. No.480/M/2014 (AY 2009-10)

<b>Lodha Crown Buildmart Pvt Ltd.,</b> 216, Shah And Nahar Indl Estate, Dr. E. Moses Road, Worli, Mumbai-18.	बनाम/ Vs.	ACIT, Central Circle-42, Mumbai.
स्थायी लेखा सं./PAN : AABCL3059L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri P.J. Pardiwala, Mr. sunil Moti Lala, Mr. Paras S. Savla and Mr. Gautam Thacker
प्रत्यर्थी की ओर से/ Revenue by :	Shri Girija Dayal, CIT-DR

सुनवाई की तारीख /Date of Hearing : 12.5.2014

घोषणा की तारीख /Date of Pronouncement : 27.6.2014

**आदेश / ORDER****PER D. KARUNAKARA RAO, AM:**

There are **7** appeals under consideration involving seven different assessees. These are the sister concerns belonging to Lodha Group. All these appeals are filed by the assessees involving AY 2009-2010 against the common order of the CIT (A)-38, Mumbai, dated 31.12.2013 involving penalty u/s 271D of the Act. Levy of penalty u/s 271D/E of the Income Tax Act is the issue in these appeals and the CIT (A) passed separate orders, dated same involving penalty u/s 271E. Since, the issues raised by the assessees in all the seven appeals are identical. Therefore, for the sake of convenience, they are clubbed, heard combinedly and disposed of in this consolidated order. Appeal wise and ground wise adjudication is given in the

following paragraphs. To start with, we shall undertake to adjudicate the appeal in the case of *Lodha Builders Pvt Ltd* in the succeeding paragraphs involving two penalties u/s 271D & 271E of the Act.

2. This appeal **ITA No.476/M/2014** filed by the assessee on 21.1.2014 is in connection with penalty levied u/s **271D** of the Act and the effective grounds raised in the appeal read as under:

"1. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in upholding the order passed by the Addl. CIT under section 271D of the Act on the basis that the appellant had **violated the provisions of section 269SS** of the Act and also argued that there was **no reasonable cause** for such alleged contravention.

2. On the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the **penalty imposed under section 271D of the Act** without appreciating the fact that the appellant had not accepted any loan or deposit of money more so in contravention of the provisions of section 269SS of the Act.

3. On the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the penalty imposed under section 271D of the Act without appreciating the fact that **the transactions of assigning or transferring rights / receivables and liabilities amongst the group companies by passing journal entries does not tantamount to taking or accepting of loan or deposit** of money and it is not in contravention of **section 269SS** of the Act. Hence, the impugned penalty levied under section 271D of the Act ought to be deleted. The Ld CIT (A) ought to have held that the making of journal entries in the books of the respective parties for the impugned purpose is also one of the recognized modes of assigning or transferring the rights / receivables / liabilities in relation to genuine business transactions and it does not result in a contravention of section 269SS of the Act and in any event, **the adjustment of accounts by passing such entries would tantamount to sufficient cause** as contemplated by section 273B of the Act.

4. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in upholding the penalty levied under section 271D of the Act without appreciating the fact that **the transactions entered into amongst the group companies were genuine, bona fide and entered into on account of commercial exigency** and were neither intended nor resulted in any tax evasion or concealment of income. The curbing of which was the avowed object behind the introduction of section 269SS of the Act.

5. Without prejudice to above grounds, on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in not deleting the penalty levied under section 271D of the Act by **applying the provisions of section 273B** and also not appreciating the detailed explanations, clarification and documents submitted by the appellant in support of the impugned genuine and bona fide business transactions, the rationale and commercial exigency for effectuating such transactions and the existence of reasonable cause for making journal entries for assigning or transferring the rights / receivables and liabilities amongst the group companies.... "

2.1 In another appeal **ITA No.481/M/2014** involving the penalty u/s **271E**, the assessee raised identical grounds.

3. During the proceedings before us, assessee filed an **additional** ground on 23.4.2014 identical to all the appeals and the same reads as under:

*"On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in holding that the penalty order passed by the Addl. CIT is within the limitation date. The impugned **penalty order is time barred under section 275(1)(c)** of the Act and hence, the said order is liable to be quashed."*

4. Briefly stated relevant facts of the case are that the assessee who belongs to the Lodha group of cases, is engaged in the business of land development and construction of real estate properties. Assessee filed the return of income declaring the total income at Rs. NIL and the same was subsequently revised to adjust carry forward losses. Assessment was completed determining the total income of Rs. 26,69,084/- under the special provisions of section 115JB of the Act. In the scrutiny assessment, there is a solitary and minor addition made by the AO u/s 14A of the Act. There is no further appeal against the said order of the AO before the CIT (A). Thus, the assessment reached finality. In the assessment, vide para 6, the AO, otherwise, mentioned about "**Accepting / repayment of loans other than account payee cheques / draft**". Eventually, AO mentioned that such accepting / repayment of loans other than account payee cheques / drafts (through journal entries) amounts to violation of the provisions of section 269SS and 269T of the Act. Subsequently, for imposing the penalty proceedings, AO made a reference to the Addl. CIT for necessary action. The contents of para 6 is extracted as under:

**"Accepting / Repayment of loans other than account payee cheques / draft:**

*6. During the course of assessment proceedings it is noticed that assessee has accepted / repaid loans from various sister concerns through Journal Entry other than account payee cheque / draft. The **assessee was asked why** the loans were accepted / repaid other than by account payee cheque / draft. In response to this, assessee informed that these loans / transactions are made **with the sister concerns** only and there is **no cash transaction** involved.*

*The contention of the assessee is not acceptable as the assessee is not falling under these exempt categories, where loan or deposit can be accepted / repaid other than by account payee cheques / draft. Hence, by not accepting the loan / deposit by account payee cheque / draft, the assessee has violated the provisions of section 269SS and 269T of the IT Act. Regarding initiation of penalty proceedings u/s 271D & 271E of the IT Act, the matter is being **referred to Addl. CIT, CR-6, Mumbai** for necessary action."*

5. From the above, it is evident that the AO show caused the assessee proposing to levy penalty u/s 271D / 271E and in reply, the assessee explained to the AO. The contention of the assessee was rejected and eventually held that the assessee violated the provisions of section 269SS and 269T of the Income tax Act. It contains the decision of the AO to make a reference to the Addl. CIT, CR-6,

Mumbai vide letter dated 11.1.2012 for initiation of penalty proceedings. He intimated that the assessee accepted loans from various sister concerns through journal entries which amounts to other than account payee cheques / drafts and informed that assessee violated the provisions of section 269SS and 269T of the Act. The amount of such loans accepted from the sister concerns amounts to Rs. 495,23,61,634/-. The details of names of the loan lenders, JV through and the amount accepted through JV are tabulated as under:

### **Lodha Builders Pvt Ltd AY 2009-2010**

Name of the lender	JV through	Amt Accepted thro' JV
Abhinandan Lodha	Lodha Developers Lodha Properties Development P Ltd	Rs. 16,06,564/- Rs. 37,38,000/-
Abhishekh Lodha	Lodha Hi-Rise Builders Pvt Ltd	Rs. 19,08,000/-
	Lodha Properties Development	Rs. 8,00,000/-
	Lodha Developers	Rs. 1,99,54,541/-
Ananthnath Contrn & farm P Ltd	Lodha Hi-rise	Rs. 1,20,06,768/-
Arihant Premises	Dharmanath Infra & Agro	Rs. 51,45,000/-
	Lodha Developers	Rs. 40,000/-
Balaji Hitech	Macrotech construction Pvt Ltd	Rs. 3,00,00,000/-
Durgeshwari Hi-rise Farms Pvt Ltd	Lodha Hi-rise Builders Pvt Ltd	Rs.2,22,51,23,478/-
	Macrotech Constructions	Rs. 1,20,50,00,000/-
Gajanand Buildtech & Agro Pvt Ltd	Vamadevi Developers & Farms PLtd	Rs. 78,462/-
Ganeshji realty and Agro P Ltd	M.P. Lodha	Rs. 1,00,000/-
Lodha Buildcon Pvt Ltd	Lodha Hi-Rise Builders Pvt Ltd	Rs. 36,52,594/-
Lodha Designer construction Pvt Ltd	Lodha Developers Ltd	Rs.1,78,13,002/-
Lodha Developers	Dharmnath Infra & Agro Pvt Ltd	Rs. 25,350/-
	Lodha Impression Real Estate P Ltd	Rs. 4,00,00,000/-
	Hi-class Buildcon Pvt Ltd	Rs. 5,00,00,000/-
	Arihant Premises	Rs. 35,95,401/-
	Marutinandan Real Estate	Rs. 9,30,50,000/-
	Hi-class Buildcon Pvt Ltd	Rs. 3,00,000/-
	Maa Padmavati Township Pvt Ltd	Rs. 20,19,76,661/-
	Macrotech Constructions Pvt ltd	Rs. 17,60,752/-
	Adinath Builders	Rs. 38,95,868/-
Lodha Estate Pvt Ltd	Lodha Dwellers	Rs. 2,59,47,923/-
Lodha Hi rise	Arihand Premises	Rs. 17,20,00,000/-
	Ajitnath Hi Tech Builders	Rs. 1,00,000/-
	Lodha Healthy Construction	Rs. 33,30,00,000/-
	Parasnath Hi tech	Rs. 1,75,00,000/-
	Kidga Vyukdcib	Rs, 72,11,828/-
	Lodha Crown Buildmart Pvt Ltd	Rs. 64,95,133/-
	Shri Sainath Enterprise	Rs. 35,00,000/-
	Gandhar Builders Pvt ltd	Rs. 14,50,000/-
Lodha Land Developers	Abhinandan Lodha	Rs. 30,000/-
	M.P. Lodha	Rs. 40,000/-
Macro Tech Constrtn P Ltd	Vivek Enterprise	Rs. 1,64,26,354/-

	Lodha Hi rise	Rs. 10,01,176/-
Sidheswar Realestate p ltd	Vamadevi developers	Rs. 63,982/-
Vamadevi Developers	Macrotech Constructions Gajanand Buildtech	Rs. 1,44,804/-
	Shree Gajanand Builders Pvt Ltd	Rs. 2,81,739/-
	Maa Padmavati Software & Infocon	Rs. 3,34,325/-
Gandhar Buildrs Pvt Ltd	Lodha Hi Rise Buildres Pvt Ltd	Rs. 3,06,06,238/-
Shantinath Designer Construction Pvt Ltd	Lodha Hi rise Builders Pvt Ltd	Rs. 15,00,000/-
Lodha Impression Real Estate Pvt Ltd	Arihant Premises P Ltd	Rs. 4,00,00,000/-
	Lodha Developers Pvt Ltd	Rs. 14,00,000/-
Hi class buldcon Pvt ltd	Arihant Premises Pvt Ltd	Rs. 5,00,00,000/-
	Lodha Developers Ltd	Rs. 15,65,000/-
Naminath Builders & Farms Pvt Ltd	Lodha Developers Ltd	Rs. 11,00,000
	Grand total	Rs. 495,23,61,634/-

6. After receiving the above reference from the AO, a show cause notice was issued by the Addl CIT to the assessee vide notice dated 15.2.2012. There was a change of incumbent and therefore, a fresh notice was issued on 21.8.2012. Assessee replied to both the notices and submitted written submissions at many occasions. Some of the contents and submissions are reproduced in para 7 of the penalty order dated 28.9.2012. Briefly stated, the submissions of the assessee include that the loans received are by way of 'journal entries' and there is no acceptance of cash by any method other than the one prescribed in the statute. The core transactions were undertaken by way of cheque only and however, the assessee resorted to the journal entries for transfer / assignment of loan among the group companies for business consideration. In case of journal entries, as per the assessee, the liabilities are **transferred / assigned** by the group companies to the assessee or to take effect of actionable claims / payments / received by group companies on behalf of the company. The journal entries were also passed in the books of accounts for **reimbursement** of expenses and for **sharing** of the expenses within the group. In such cases, the provisions of section 269SS of the Act have no application and for this, the assessee relied on the judgment of the Hon'ble Madras High Court in the case of CIT vs. **Idhayam Publications Ltd** [2007] 163 Taxman 265 (Mad.) which is relevant for the proposition that *the deposit and the withdrawal of the money from the current account could not be considered as a loan or advance*. It is the contention of the assessee that there is no cash

transactions involved and relied on the contents of the CBDT Circular No.387, dated 6<sup>th</sup> July, 1984 and mentioned that the purpose of introducing section 269SS of the Act is to curb cash transactions only and the same is not aimed at transfer of money by transfer / assignment of loans of other group companies. In this regard, Ld Counsel cited various decisions mentioned in para 7.4 of the impugned order. It is the submission of the assessee that the said provisions of section 269SS of the Act do not apply to "**journal entries**". To substantiate the reasonable cause as to why journal entries were resorted to, the assessee made the following submissions.

- "7.5.1. Journal entries are passed to avoid delay in procedural hassles of preparing cheque and obtaining signature of authorized person which may cost delay or to arrange temporary fund to effect such transactions. The assessee company did not have internet facility so that intercompany balance can be settled through bank account. Hence, there was a business exigency to clear transactions by passing journal entries.*
- 7.5.2. All journal entries are genuine / bona fide and at no point of time there are remotely any cash transactions with group companies.*
- 7.5.3. All journal entries are with group / associate companies only having permanent account number and are filing their income tax returns regularly.*
- 7.5.4. There is no revenue loss to the exchequer.*
- 7.5.5. All the transactions are recorded in the account of the assessee and there are corresponding entries in the books of account of the respective parties which satisfied the test of business exigency.*
- 7.5.6. The AR further submitted during the period when journal entries were passed, the assessee company was under the bona fide belief that there is no breach of provisions of income tax Act considering recognized method of assigning credit / debit balance by passing journal entries and various decisions cited above. In this context, he referred to section 273B of the Act. He also relied on the decision of Bombay High Court in case of Triumph International Finance India Limited dated 12<sup>th</sup> June, 2012 reported in 22 taxmann.com 138 to submit that in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan / deposit was not a bona fide transaction and was made with a view to evade tax the cause shown by the assessee was a reasonable cause and, therefore, in view of section 273B of the Act, no penalty under section 271E could be imposed for contravening the provisions of section 269T of the Act."*

7. On considering the above submissions of the assessee, Addl. CIT examined the provisions of section 269SS/T of the Act, as the case may be, and discussed certain judgments including the binding judgment of the Hon'ble Bombay High Court in the case of **Triumph International (I) Ltd**, dated 12<sup>th</sup> June, 2012 reported in **22 taxmann.com 138**. Further, he reproduced the contents of the said judgment of the Hon'ble High Court (supra) which is relevant for the proposition that where the loan / deposit were repaid by debiting the amount through journal entries, it must be held that the assessee has **contravened** the relevant provisions. Though

the said judgment was delivered in the context of provisions of section 269T of the Act, the same was equally adopted for the provisions of section 269SS of the Act. Addl. CIT discussed on the irrelevance of the genuineness of the transactions in these matters of impugned penalty proceedings. He also examined the aspects of the *bona fide* and genuineness of the transactions before concluding that the **assessee failed to establish the genuineness** of transactions carried out. Addl. CIT further mentioned that even bona fide and genuineness of the transactions, if carried out in violation of provisions of section 269SS of the Act, the same would attract the provisions of section 271D of the Act. There was a discussion on the applicability of the decision of the Tribunal in the case of *Mahak Sing vs. ITO* (ITAT, Del) 127 ITD 1 relating to the *mens rea* issues. Eventually, the Addl. CIT levied the penalty of Rs. 495,23,61,634/- u/s 269SS of the Act within the meaning of section 271D of the Act. Further, depending on the nature of credit, journal entries are summarized into **6** categories, namely (i) *assignment of debit balance to a group company (4.75 Crs)*; (ii) *lender assigns debt to group company (Rs. 93.47 Crs)*; (iii) *assigning of group debt to an independent company (Rs. 374.92 Crs)*; (iv) *Directors / family account transfers (Rs. 2.81 Crs)*; (v) *payment / receipt on behalf of group company (Rs. 19.19 Crs)* and (vi) *miscellaneous (Rs. 0.10 Crs)*. Addl CIT passed similar penalty order u/s 271D in respect of other group concerns namely *M/s. Lodha Properties Development Pvt Ltd (Rs. 30,11,30,396/-)*; *M/s. Adhinath Builders Pvt Ltd (Rs. 32,81,39,868/-)*; *M/s. Ajitnath Hi-tech Builders Pvt Ltd (Rs. 81,75,244/-)*; *M/s. Aasthavinaya Real Estate Pvt Ltd (Rs. 61,50,900/-)*; *M/s. Ajitnath Hi-tech Builders Pvt Ltd and M/s. Infratech Builders and Agro Pvt Ltd (Rs. 36,67,81,854/-)*. Aggrieved with the same, assessee filed an appeal before the CIT (A).

#### **Before the CIT(A):**

8. During the first appellate proceedings, CIT (A)-38, Mumbai passed a combined order on 31.12.2013 confirming the penalties levied by the Addl. CIT in all the above referred cases. It is the conclusion of the CIT (A) that the assessee failed to establish the reasonable cause as required u/s 273B of the Act. Concluding para of the said CIT (A)'s order reads as under:

*"9.37. Considering all the above facts, it is clear that the appellant failed to establish "reasonable cause" as required u/s 273B of the Act accordingly, the penalties levied amounting to Rs. 495,23,61,634/-; Rs. 39,11,30,396/-; Rs. 32,81,39,868/-; Rs. 61,50,900/-; Rs. 81,75,244/- and Rs. 36,67,81,854/- in the cases of M/s. Lodha Builders Pvt Ltd., M/s. Lodha Properties Development Pvt Ltd., M/s. Adinath Builders Pvt Ltd., M/s. Aasthavinaya Real Estate Pvt Ltd., M/s. Ajitnath Hi-tech Builders Pvt Ltd and M/s. Infratech Buildes and Agro Pvt Ltd respectively are hereby confirmed."*

9. During the proceedings before the first appellate authority, assessee filed written submissions common to all appeals of the group. Referring to the judgment of the Hon'ble High Court in the case of **Triumph International (I) Ltd** (supra), assessee submitted that the **commercial expediency** of the group concerns is held to be acceptable reason for squiring up/swapping of the transactions by passing the journal entries and therefore, it constitutes a 'reasonable cause' in the instant case too. For this, assessee relied on the judgment in the case of **Sun Engineering works Pvt Ltd** 198 ITR 297 and others. It is the case of the assessee that the Hon'ble High Court of Bombay eventually deleted the penalty on the ground of 'reasonable cause' and therefore, on appreciating the 'principles of commercial expediency' here in this case, the AO/ Addl. CIT should not have imposed the penalty. CIT (A) extracted the written submissions on the 'reasonable cause' vide the letters dated 15.4.2013 and 3.5.2013. Further, on these submissions, CIT (A) called for remand report of the AO vide letter dated 10.5.2013 and considered the remand report of the Addl. CIT dated 31.10.2013 before confirming the penalty. Further, CIT (A) discussed the factual matrix of the transactions involved among the group concerns in the light of the provisions of section 269SS as well as 271D of the Act. Para 9 of the impugned order contains the decision of the CIT (A), wherein, he dealt with the remand report, provisions of section 46A of the IT Rules, 1962. CIT (A) is of the opinion that the journal entries constitute contravention of provisions of section 269SS of the Act and therefore, such contravention attracts the provisions of section 271D of the Act. He relied heavily on the judgment of the jurisdictional High Court in the case of Triumph International (I) Ltd (supra). The contents of para 9.4 to 9.9 of the CIT (A)'s order are relevant here. Further, CIT (A) held that genuineness of the transactions is no excuse for avoiding the provisions of these sections. Relevant paras of the said judgment of Bombay High Court were extracted in para 9.13 of the impugned order. Assessee detailed the reasonable cause for each of the transactions as evident from

para 9.16 of the impugned order. However, the same were not considered as reasonable causes by the CIT (A). CIT (A) referred to the judgment of the Hon'ble Rajasthan High Court in the case of *Madhan Lal Mahaveer Prasad* (296 ITR 377) to support his case. In any case, this is not the case where the journal entries were held as contravention to the provisions of section 269SS of the Act. As seen from para 9.26, the CIT (A) mentioned that there was a **limited journal entries** in the case of M/s. Triumph International Finance (I) Ltd (supra) and the reasons of swapping between the debtors and creditors by passing journal entry was seen as reasonable cause by the High Court. CIT (A) discussed various decisions of the Tribunal but most of them do not involve the fact of involving the journal entries unlike the present case and also in the case of M/s. Triumph International Finance (I) Ltd (supra). Eventually, CIT (A) confirmed the penalties as mentioned above.

10. **On Limitation of Time:** During the proceedings before the CIT (A), there was also an issue relating to 'limitation' u/s 275 of the Act. It is the submission of the assessee that the present orders being penalty in nature, which are unconnected with the assessment of income which are covered by the clause (a) of section 275(1) of the Act, the provisions of clause (c) of section 275(1) of the Act are relevant. Considering the date of initiation of the penalty proceedings during the very assessment itself (assessment dated 5.12.2011) (para 6 extracted above), the penalty order passed by the Addl. CIT on 28.9.2012 is barred by limitation of time. Assessee relied on the judgment of the Rajasthan High Court in the case of **Jitendra Singh Rathore** [352 ITR 327] (Raj). However, CIT (A) did not considered the said judgment of the Hon'ble High Court. Instead, he relied on the decision of ITAT, Chandigarh **Special** Bench in the case of **Dewan Chand Amit Lal** [283 ITR (AT) 203]. In the said judgment, the Special Bench held that the 'limitation' does not commence from the date of the show cause notice issued by the Assessing Officer as Joint Commissioner is the empowered to impose the penalty. CIT (A) discussed the ratio of the said Rajasthan High Court judgment in the case of **Jitendra Singh Rathore** (supra) and extracted its conclusion that the period of limitation should be reckoned from the date of issue of notice from the AO and not from the date of issue of show cause notice by the Joint Commissioner. Without

analyzing the distinguished features of the said judgment of the Rajasthan High Court, substantially, the CIT (A) followed the said Special Bench decision (supra). CIT (A) is of the opinion that the Special Bench decision of the Tribunal has more binding effect than that of the non-jurisdictional High Court judgment. Para 9.34 and 9.35 of the CIT (A)'s order are relevant here. Essentially, for dismissing the assessee's legal issue on the limitation of time, CIT (A) relied on the said order of the Special Bench in the case of *Dewan Chand Amit Lal* (supra) and held that the penalty proceedings are not barred by the limitation of time as the show cause notice issued by the Addl. CIT dated 15.2.2012 and the due date after considering the extended time u/s 129 of the Act is 30.9.2012. Since, the Addl. CIT passed order on 28.9.2012, the impugned orders of the penalty are valid. Accordingly, the CIT(A) **dismissed the legal issue**. In any case, it is not the case of the CIT (A) that the provisions of section 275(1)(a) of the Act apply to the facts of the present case. Aggrieved with the above conclusions on both the legal as well as on merits, the assessee is in appeal before the Tribunal in all the cases under consideration.

#### **Before the ITAT:**

11. During the proceedings before us, Shri P.J. Pardiwala Ld Counsel for the assessee pickup the facts and developments relating to the case of M/s. Lodha Builders Pvt Ltd. To start with, Ld Counsel brought out attention to the additional ground and demonstrated its legal nature and prayed for its admission. On hearing both the parties, we find that the said ground detailed in para 3 of this order is legal in nature and therefore, the same is admitted. This ground raises various issues and they are required to be addressed by the Tribunal apart from the issues relating to the merits of penalty.

12. Ld Counsel for the assessee detailed certain dates relevant for deciding the issue under consideration. In this regard, a chart is filed by the assessee's counsel showing the names of various group assessee's where the penalty was levied, details of dates of AO or date of referral to the Addl CIT or others. The said details are inserted as under:

S N o	Entity name	Date of AO order	Order passed by	Date of ref. to ADIT	Penalty u/s	Date of Penalty SCN by JC	End of FY in which proceedings are initiated	Six Months from end of month in which penalty was initiated (Asst. Order)	Six months from the end of months in which penalty was initiated (SCN)	Limitation for levy of penalty	Extension of limitation on u/s 275(2) Exp (i).w. 129	Extended limitation	Date of penalty order
1	Lodha Builders Pvt Ltd	5.12.11	ACIT	11.1.12	271E	15.2.12	31.3.12	30.6.12	31.8.12	31.8.12	30	30.9.12	28.9.12
2	Lodha Builders Pvt Ltd	5.12.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.6.12	31.8.12	31.8.12	30	30.9.12	28.9.12
3	Ashtavinayak Real Estate Pvt Ltd	25.11.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.5.12	31.8.12	31.8.12	30	30.9.12	28.9.12
4	Adinath Builders Pvt Ltd	15.12.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.6.12	31.8.12	31.8.12	30	30.9.12	28.9.12
5	Ajinath Hi-Tech Builders Pvt Ltd	5.12.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.6.12	31.8.12	31.8.12	30	30.9.12	28.9.12
6	Infratech Builders and agro Pvt Ltd	25.11.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.5.12	31.8.12	31.8.12	30	30.9.12	28.9.12
7	Lodha Properties Development Pvt Ltd	7.12.11	ACIT	11.1.12	271D	15.2.12	31.3.12	30.6.12	31.8.12	31.8.12	30	30.9.12	28.9.12

13. Referring to the above data, Sri Pardiwala, Ld Counsel submitted that the impugned penalty orders are barred by limitation of time as they are passed after the expiry of the statutory period specified in clause (c) of Section 275(1) of the Act. In this context, Ld Counsel read out the provisions of section 275(1) and mentioned that the provisions of **clause (a) to this section are not applicable** to the impugned penalties imposed u/s 271D and 271E of the Act. He mentioned that the violations if any under section 269SS or 269T of the Act and consequent penalty imposed u/s 271D/271E of the Act have no nexus to the income of the assessee or appeal proceedings related to the said income. Therefore, the penalty proceedings under consideration are completely independent of the assessment proceedings and thus, the said clause (c) becomes relevant. Therefore, the provisions of clause (a) have no relevance for the purpose of computing the time limitation. In this regard, he relied on various decisions to suggest that the penalty proceedings are separate and the limitation of time is to be accounted as per the provisions of clause (c) to section 275(1) of the Act. Referring to the said provisions of the said clause (c), Ld Counsel mentioned that the imposition of penalty needs to be completed not "*after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later*". Referring to the interpretation of the expressions

'*action for imposition of penalty*', Mr Pardiwala mentioned that such '*action*' if any is always anterior (= earlier) in time *qua* the initiation of the penalty.

14. Referring to the facts of the present case, Ld Counsel mentioned that the said '*action*' has begun with the first show cause notice issued by the AO in the assessment proceedings (para 6 of the assessment order). Accordingly, the AO has heard the assessee at length on this issue of violation of the provisions of section 269SS and 269T, as the case may be, and the assessee vehemently contested the AO's proposals in the matter. Rejecting the assessee's explanation, AO formed an opinion in the matter against the assessee and eventually, AO made a referral to the Addl CIT, who is the **authority empowered to impose** the penalty under the statute. Ld Counsel submitted that the provisions of relevant sections of the Act do not provide on who is **empowered to initiate** such penalty proceedings. However, it only provides for who is empowered to impose penalty. In this regard, Ld Counsel relied on various decisions to strengthen his legal proposition. Further, he mentioned that the show cause notice first issued by the Assessing Officer is valid in such matters and filed copies of judgments of the Hon'ble High Courts of Delhi and Rajasthan. He also mentioned that the Special Bench decision in the case of *Dewan Chand Amit Lal* (supra) is not a binding judgment considering the existence of judgments of various High Courts i.e., **CIT vs. Hissaria Bros** [2007] 291 ITR 244 (Raj) which upheld the order of the Tribunal, wherein the penalty show cause notice, which was issued by the AO, is found valid for the purpose of computing the time limitation u/s 275(1)(c) of the Act. It is also mentioned that the judgment of the Hon'ble Rajasthan High Court in the case of *Hissaria Bros* (supra) was subsequently followed by the same High Court in the case of *CIT vs. Jitendra Singh Rathore* [2013] 352 ITR 327 (Raj). It is the contention of the assessee that an identical decision was taken by the Delhi High Court in the case of **Noida Toll Bridge Co. Ltd (supra)**. It is the contention of the assessee that in the instant case, assessment orders were passed on Nov / Dec. 2011 and therefore, the penalty would be time barred in May / June, 2012, as the case may be, whereas the penalty orders passed by the Addl. CIT on 28.9.2012. Referring to the contention of the CIT (A), who held that Special Bench decision in the case of *Dewan Chand Amit Lal*

(supra) has a precedent over the non-jurisdictional High Court judgment, the Ld Counsel mentioned that prima facie, the said propositions are erroneous and consequently, the judgments from any hon'ble High Court has more precedent value over a Special Bench decision of the Tribunal.

15. *Per contra*, on this legal issue, it is the contention of Ld Sri Girija Dayal, CIT-DR that the impugned penalty orders of the AO and the CIT(A) need to be confirmed. Accordingly to him the provisions of clause (a) to section 275(1) apply to the present case and in that case, the orders are very much valid legally as there is no expiry of limitation of time. Further, he mentioned that the time limitation commences from the date of issue of show cause notice by the Addl. CIT, who has an authority to impose the penalty and not from the date of the SC notice of the AO or his order of the assessment, which contains the proposal to make a reference to the Addl. CIT for imposing the penalty. If the provisions of clause (a) are applied and the date of show cause notice issued by the Addl. CIT is considered, the penalty orders dated 28.9.2012 are very much in time and therefore, they are valid. However, in such case, Ld DR could not demonstrate the circumstances where the provisions of clause (c) of section 275(1) of the Act, can be invoked. It is thus summed up by the assessee's counsel that if the penalty matters are covered by the provisions of clause (a) of the said section, the provisions of clause (c) become redundant and vestigial.

### **Legal Issue –Limitation of time – Finding of the Tribunal**

16. We have heard both the parties on the legal issues raised in the Additional Ground i.e., applicability of the provisions of clause (c) to section 275(1) of the Act to the impugned penalties and the manner of computing the limitation of time provided in the said clause. To decide the above issues, in our opinion, the provisions of section 275 of the Act are required to analysed. The same read as under:

*"275(1)[(a) in a case where the relevant assessment or other order is the subject-matter of an appeal 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 Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :*

*[**Provided** that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and 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 the Commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later;]*

*(b) .....*

*(c) **in any other case**, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."*

17. The said provisions are explained by various Honble High courts and Tribunal. To start with, Honble High Court of Rajasthan in the case of CIT vs. Hissaria Bros (supra) explained the said provisions vide the para 21 to 27 of the said judgment and the same are produced as under:

**"21.** *By substituting section 275(1), which became operative from 1-4-1989, the provision of 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 Dy. CIT(A) or the CIT(A) under section 246 or with effect from 1-6-2000, section 246A or an appeal to the 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).*

*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 Dy. CIT(A) or the CIT(A) or, as the case may be, the Tribunal is received by the Chief CIT or CIT, whichever period expires later.*

**22.** *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.*

To this effect, a Circular No. 551, dated 23-1-1990 [(1990) 82 CTR (St.) 325] and another Circular No. 554, dated 13-2-1990 [(1990) 82 CTR (St.) 280] were issued by the CBDT.

**23.** A close scrutiny of section 275 which is 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 cases where the relevant assessment order or other orders are the subject-matter of an appeal to the CIT(A) under section 246 or an appeal to the 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 CIT(A) or, as the case may be, of the Tribunal is received by the Chief CIT or CIT, whichever period expires later.

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

**24.** We have also noticed that this provision was brought into effect in 1970 with effect from 1-4-1971, 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.

**25.** 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.

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 six 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.

**26.** 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.

**27.** 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 proceedings 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."*

18. Similar interpretations were taken by the ITAT, Rajkot Bench (Third Member) in the case of ACIT vs. *Dipak Kantilal Takvani* [2013] 39 taxmann.com 53 (Rajkot – Trib.) (TM) and the penalty orders u/s 271D and 271E of the Act, being unconnected to the income of the assessee, are to be considered as per the provisions of clause (c) of section 275(1) of the Act. The said Rajkot Bench of ITAT has followed the judgment of the Rajasthan High Court in the case of *Jitendra Singh Rathore* (supra). In this case, the Hon'ble High Court also observed that the first show cause notice for levy of penalty was issued by the AO though the authority obtained to initiate penalty proceedings has also subsequently issued a show cause notice as well. Hon'ble High Court held that the penalty proceedings were initiated by issue of first notice from the AO and not from the date of issue of notice by the JCIT and thus, the penalty order passed after expiry of 6 months from the end of the month in which the action for imposition of penalty initiated was barred by limitation. The said decision of the ITAT in the case of *Dewan Chand Amit Lal* (supra) deferred at the relevant point of time that the order of the Tribunal in the case of *Hissaria Bros* (supra). However, it is a fact that the said decision of the Tribunal in the case of *Hissaria Bros* (supra) was subsequently upheld by the Hon'ble Rajasthan High Court. Therefore, considering the principle of precedence, it is necessary for the Tribunal to follow the order of the High Court where there is no contrary judgment from the jurisdictional High Court. As stated earlier, the said judgment from the Rajasthan High Court was also followed in the case of *Jitendra Singh Rathore* (supra). Therefore, in a case where the AO made a reference in the assessment order about the requirement of initiating the penalty proceedings and acted by making a reference to the JCIT, who is actually empowered by the statute to impose the penalty u/s 271D and 271E of the Act, the limitation should be

counted right from the date of such reference in the assessment order / issue of show cause notice by the AO.

19. Further, the judgment of Honble Delhi High Court in the case of *M/s Noida Toll Bridge Co. Ltd* [262 ITR 260] (Del) is relevant. We have also come across another judgment of the same High court in the case of *CIT vs. Worldwide Township Projects Ltd* vide ITA No.232/2014, where Honble Delhi High Court explained the above said provisions in the context of penalty levied u/s 271D of the Act. Para 8 of the said judgment of the High Court is relevant here and the same reads as under:

"8. A plain reading of the aforesaid section indicates that (the import of the above provisions is limited) it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to section 269SS of the Act which defines loan or deposit to mean "loan or deposit of money". The liability recorded in the books of accounts by way of journal entries, i.e., crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels M/s. PACL India Ltd made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s. PACL India Ltd. In view of this admitted position, no infringement of section 269SS of the Act is made out. This court, in the case of **Noida Toll Bridge Co. Ltd** (supra), considered a similar case where a company had paid money to the Government of Delhi for acquisition of a land on behalf of the assessee therein. The Assessing officer levied a penalty under section 271D of the Act for alleged violation of the provisions of section 269SS of the Act since the books of the assessee reflected the liability on account of the lands acquired on its behalf. On appeal, the CIT (A) affirmed the penalty. The order of the CIT was successfully impugned by the assessee before the ITAT. On appeal, this Court held as under:

"While holding that the provisions of section 269SS of the Act were not attracted, the Tribunal has noticed that (i) in the instant case, the transaction was by an account payee cheque; (ii) **no payment on account was made in cash** either by the assessed or on its behalf; (iii) no loan was accepted by the assessee in cash, and (iv) the payment of Rs. 4.85 crores made by the assessee IL & FS, which holds more than 30 per cent of the paid-up capital of the assessee, by journal entry in the books of account of the assessed by crediting the account of IL & FS.

Having regard to the aforementioned findings, which are essentially findings of fact, we are in complete agreement with the Tribunal that the provisions of section 269SS were not attracted on the facts of the case. Admittedly, neither the assessee nor IL & FS had made **any payment in cash**. The order of the Tribunal does not give rise to any question of law, much less a substantial question of law.

*We accordingly decline to entertain the appeal. Dismissed.”*

20. Thus, the judgment in the case of M/s *Worldwide Township Projects Ltd* vide ITA No.232/2014 is relevant for the proposition that the provisions of section 275(1)(a) of the Act would not be applicable to the penalties u/s 271D of the Act and the provisions of section 275(1)(c) would **only** be attracted. This is also relevant for another ratio that the period will be counted from the date of assessment order where the Assessing Officer decided to make a referral to the Addl. CIT.

21. On this aspect, following the said judgment, the Delhi Bench of the Tribunal in the case of *Dinesh Jain* ITA no 3794/Del/2013 held that it is the AO who applies mind during the assessment proceedings to the issues relating to the violation of section 269SS or 269T of the Act and therefore, the limitation should commence from the date of the Assessment Order. On the facts of squiring up of the loans with the wife by way of 'journal entries', Tribunal held that such 'journal entries' are outside the scope of the relevant penal provisions. Thus, it is the decision of the High Court/Tribunals that the provisions of clause (a) of section 275(1) of the Act would not apply and in alternative, the provisions of section 275(1)(c) only be attracted in the matters of penalties levied u/s 271D/271E of the Act. Further, it is also held that the limitation period would be counted from the date of **assessment order with the AO's decision to make referral** to his Addl CIT, who is authorized to impose penalty.

22. In the instant case, it is an undisputed fact that the Assessing Officer discussed the details as to the violation of the provisions of section 269SS and 269T of the Act in the assessment order. It also contains a reference to the requirement of making a reference to the Addl. CIT, CR-6, Mumbai for necessary action. Para 6 of the assessment order, which is already extracted above paras, bears witness to the above findings. Further, to give effect to his findings in the assessment order, the AO wrote a letter to the Addl. CIT on 11.1.2012, intimating to him about the violation to the said provisions of the Act. On receipt of the said reference from the AO, Addl. CIT issued a show cause notice on 15.2.2012 calling for explanation of the assessee as to why the penalty u/s 271D should not be imposed in the case of the

assessee. Eventually, Addl. CIT passed a penalty order u/s 271D of the Income Tax Act on 28.9.2012. Considering the fact that the assessment order is dated 5.12.2011 and as per the provisions of clause © to section 275(1) of the Act, 6 months from the end of the month in which the action was initiated expires on 30.6.2012. After considering the explanation of limitation u/s 275(2), Explanation 1 read with section 129 of the Act, extended limitation expires on 30.7.2012 against the above due dates, the penalty order passed by the Addl. CIT on 28.9.2012, which is barred by the limitation. Thus, the orders of the penalty of this kind have to be explained considering the provisions of clause (c) of section 275(1) of the Act. Further, it is the summary of the decision cited above that any case where AO made a reference in the assessment order, after discussing the same with the assessee during the regular assessment proceedings or made a referral to the Addl. CIT for imposition of the penalty. In our opinion, these preliminary acts constitute **"action for the imposition of penalty"**. An action for imposition of penalty is always anterior in time to the **"actual"** imposition of penalty. In our opinion, the AO's discussion given in para 6 of the assessment order and AO's letter dated 6 to the Addl. CIT constitutes *"action for imposition of penalty"*. Therefore, we are of the opinion, the assessee should succeed on the legal issue. Accordingly, ground raised by the assessee is **allowed**.

### **Provisions of section 273B of the Act - Reasonable Cause**

23. Now, we shall take up the **applicability of provisions of section 273B** of the Act *qua* the reasonable cause to be proved by the assessee. The provisions of section 273B of the Act reads as under:

**"Section 273B.** *Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of [section 271, section 271A, [section 271AA], section 271B, [section 271BA], [section 271BB,] section 271C, [section 271CA,] section 271D, section 271E, [section 271F, [section 271FA,] [section 271FB,] [section 271G,]] [section 271H,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or [section 272B or] [sub-section (1) [or sub-section (1A)] of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was **reasonable cause** for the said failure.]"*

24. Brief facts of the present case are that the assessee belongs Lodha group of cases and there are large number of transactions involving the receipts and payments of loans and advances among the sister concerns of the Lodha group settled by way of 'journal entries'. During the assessment proceedings, AO asked the assessee to show cause as to why loans were accepted / repaid other than by the account payee cheque / draft. In this regard, assessee informed that the said loans / advances were transacted with the sister concerns only by way of 'journal entries' and there is no cash transactions involved the provisions of section 269SS and 269T have no application to the facts of the case. Thus, it is the case of the assessee that the said transactions with the sister concerns are for **commercial reasons** and they should be kept outside the scope of the provisions of sections 269SS/269T of the Act. During the penalty proceedings before the Addl CIT, there was an inquiry into the reasons for violation of the said provisions of the Act and the assessee explained the said reasons (vide para 7.5 of the penalty order) which are already extracted above. The Addl. CIT did not consider the 'explanations' as the 'reasonable causes' and imposed the penalties in all the seven cases under consideration.

25. During the first appellate proceedings also, assessee made a detailed submission on various aspects of the reasonable causes which were already discussed in the paras above. On perusal of the impugned order, we find that CIT (A) relied heavily on the judgment of the jurisdictional High Court in the case of *Triumph International (I) Ltd, supra* dated 17.8.2012 for the proposition that the receiving loans and repayments through 'journal entries' constitutes 'violation' within the meaning of provisions of section 269SS and 269T of the Act. The contents of para 9 of the said judgment are relevant here which read as under:

"9. *The question as to whether loans / deposits can be repaid by debiting the accounts through journal entries has been considered by this Court in the assessee's own case in Income Tax Appeal No.5746 of 2010 decided on 12<sup>th</sup> June, 2012. Applying the ratio laid down therein we hold that receiving loans / deposits through journal entries would be in violation of section 269SS of the Act. However, as rightly contended by Mr. Pardiwala, Ld Senior Advocate appearing on behalf of the assessee, the transactions in question were undertaken not with a view to receive loans / deposits in contravention of section 269SS but **with a view to extinguish the mutual liability of paying / receiving the amounts by the assessee and its sister concern to the customers.** In the **absence of any material on record to suggest that the transactions in question were not reasonable or bona fide and in view***

*of section 273B of the Act, we see no reason to interfere with the order of the Tribunal in deleting the penalty of Rs. 22.99 Crs."*

26. From the above, it is evident that the Hon'ble High Court has granted relief to the assessee on finding that there is no material to suggest that the transactions in question are not reasonable or bona fide. Of course, it is the finding of the Honble High court that the impugned journal entries in that case do not escape the rigors of the provisions of section 269SS/269T of the Act. The CIT (A) did not appreciate the 'reasons' given by the assessee for receiving loans and advances through 'journal entries' as 'reasonable causes'. It is the finding of Honble High court in the case of M/s Triumph International Ltd supra, that *'the transactions in question were undertaken not with a view to receive loans / deposits in contravention of section 269SS but with a view to extinguish the mutual liability of paying / receiving the amounts by the assessee and its sister concern to the customers. In the absence of any material on record to suggest that the transactions in question were not reasonable or bona fide and in view of section 273B of the Act, we see no reason to interfere with the order of the Tribunal in deleting the penalty..'* He ignored the above finding of the Court and confirmed the penalty levied by the Addl. CIT. Aggrieved with the above decision of the CIT (A), the assessee is in appeal before the Tribunal with the argument that the assessee's reasons constitutes a reasonable cause.

27. During the proceedings before us, Ld Counsel for the assessee summarized all the transactions involving all the sister concerns and grouped the various transactions entered in the books of accounts by way of journal entries into 7 categories. The details of these seven groups are submitted as under:

- 1 Alternate mode of raising funds;
- 2 Assignment of receivables;
- 3 Squaring up transactions;
- 4 Operational efficiencies/MIS purpose;
- 5 Consolidation of family member debts;
- 6 Correction of errors; and
- 7 Loans taken in case

27.1. All the transactions that involved the impugned journal entries fall in one of the above seven reasons and they are only for 'business purposes' of the assessee's under consideration.

28. Further, the assessee also classified the impugned transactions among the said seven groups and the said chart is inserted here as under for completeness of this order:

### **Classification of reasonable causes**

Lotha Group of Companies	
Assessment Year 2009-10	
SN	Categorization
SN	Explanation
1	Alternate mode of raising funds
2	Assignment of receivables
3	"On behalf" and square up transactions
4	Operational Efficiency/MIS purpose
5	Consolidation of family member debts
6	Correction of Error
7	Loans taken in cash

**The Chart showing the details of groups of the transactions to which falls into each of the group are tabulated as under:**

Lodha Builders Private Limited

Assessment Year 2009-10

Appeal No:476/Mum/2014

*Scan*

Penalty levied under section 271D of the Income-tax Act, 1961

SN	Name of the Appellant	Entry passed in the books of Appellant		Amount (in Rs.)	Category
		Debit	Credit		
1	Lodha Builders Private Limited	Lodha Developers	Abhinandan Lodha	1,606,564	5
2	Lodha Builders Private Limited	Lodha Properties	Abhinandan Lodha	3,738,000	5
3	Lodha Builders Private Limited	Lodha Hi-Rise	Abhisheck Lodha	1,908,000	5
4	Lodha Builders Private Limited	Lodha Properties	Abhisheck Lodha	800,000	5
5	Lodha Builders Private Limited	Lodha Developers	Abhisheck Lodha	19,954,541	5
6	Lodha Builders Private Limited	Lodha Hi-Rise	Anantnath Constructions & Farms	12,006,768	2
7	Lodha Builders Private Limited	Dharamanath Infra & Agro	Arihant	5,145,000	3
8	Lodha Builders Private Limited	Lodha Developers	Arihant	40,000	4
9	Lodha Builders Private Limited	Macrotech Constructions	Balaji Hi-Tech	30,000,000	4
10	Lodha Builders Private Limited	Lodha Hi-Rise	Durgeshwari Hi- Rise	2,217,000,000	1
11	Lodha Builders Private Limited	Lodha Hi-Rise	Durgeshwari Hi- Rise	8,123,479	1
12	Lodha Builders Private Limited	Macrotech Constructions	Durgeshwari Hi- Rise	1,205,000,000	1
13	Lodha Builders Private Limited	Vamadevi	Gajanand Buildtech	78,462	6
14	Lodha Builders Private Limited	M P Lodha	Ganeshji Reality	100,000	7
15	Lodha Builders Private Limited	Lodha Hi-Rise	Lodha Buildcon	3,652,594	4
16	Lodha Builders Private Limited	Lodha Developers	Lodha Designer Construction	17,813,002	2
17	Lodha Builders Private Limited	Dharamanath	Lodha Developers	25,350	4
18	Lodha Builders Private Limited	Lodha Impression	Lodha Developers	40,000,000	2
19	Lodha Builders Private Limited	Hi- Class Buildcon	Lodha Developers	50,000,000	2
20	Lodha Builders Private Limited	Arihant	Lodha Developers	3,595,401	2
21	Lodha Builders Private Limited	Marutinandan Real Estate	Lodha Developers	93,050,000	3
22	Lodha Builders Private Limited	Hi-Class Buildcon	Lodha Developers	300,000	3
23	Lodha Builders Private Limited	Macrotech Constructions	Lodha Developers	1,760,752	2

24	Lodha Builders Private Limited	Ajitnath	Lodha Hi-Rise	100,000	3
25	Lodha Builders Private Limited	Lodha Healthy	Lodha Hi-Rise	333,000,000	2
26	Lodha Builders Private Limited	Parasnath Hi-tech Const	Lodha Hi-Rise	17,500,000	4
27	Lodha Builders Private Limited	Arihant	Lodha Hi-Rise	172,000,000	4
28	Lodha Builders Private Limited	Ajitnath	Lodha Hi-Rise	100,000	3
29	Lodha Builders Private Limited	Lodha Healthy	Lodha Hi-Rise	333,000,000	3
30	Lodha Builders Private Limited	Parasnath Hi-tech Const	Lodha Hi-Rise	17,500,000	3
31	Lodha Builders Private Limited	Lodha Buildcon	Lodha Hi-Rise	7,211,828	4
32	Lodha Builders Private Limited	Lodha Crown Buildmart	Lodha Hi-Rise	6,495,133	4
33	Lodha Builders Private Limited	SSE	Lodha Hi-Rise	3,500,000	3
34	Lodha Builders Private Limited	Gandhar Builders	Lodha Hi-Rise	1,450,000	3
35	Lodha Builders Private Limited	Abhinandan Lodha	Lodha Land Developers	30,000	5
36	Lodha Builders Private Limited	M P Lodha	Lodha Land Developers	40,000	5
37	Lodha Builders Private Limited	Vivek Enterprises	Macrotech Constructions	16,426,354	3
38	Lodha Builders Private Limited	Lodha HI-Rise	Macrotech Constructions	1,001,176	3
39	Lodha Builders Private Limited	Vamadevi	Siddheshwar Real Estate	63,982	6
40	Lodha Builders Private Limited	Macrotech Constructions	Vamadevi	319,092,691	4
41	Lodha Builders Private Limited	Gajanand Buildtech	Vamadevi	144,804	6
42	Lodha Builders Private Limited	Shri Gajanand Builders	Vamadevi	281,739	6
43	Lodha Builders Private Limited	Ma Padmavati Software Infocom	Vamadevi	334,325	6
44	Lodha Builders Private Limited	Lodha HI-Rise	Gandhar Builders	30,606,238	2
45	Lodha Builders Private Limited	Lodha HI-Rise	Shantinath Designer	1,500,000	2
46	Lodha Builders Private Limited	Arihant Premises	Lodha Impression	40,000,000	2
47	Lodha Builders Private Limited	Lodha Developers	Lodha Impression	1,400,000	2
48	Lodha Builders Private Limited	Arihant Premises	Hi-Class Buildcon	50,000,000	2
49	Lodha Builders Private Limited	Lodha Developers	Hi-Class Buildcon	1,565,000	2
50	Lodha Builders Private Limited	Lodha Developers	Naminath Builders	1,100,000	2

Sl No.1, 2, 3, 4, 5, 6 & 7 refer to the categories mentioned in the preceding table inserted in page 23 of the order relating to 'Classification of Reasonable Causes'.

29. Submission of the assessee justifying the claim of immunity u/s 273B of the Act to the impugned journal entries is as under:

- a) *"The seven categories of entries and a very brief explanation.*
- b) *These entries are with sister concerns and associates. The view in the penalty order that Durgeshwari is an independent concern is incorrect because penalty order itself starts with the sentence that **"Assessee has taken from sister concerns"**.*
- c) *It has been proved before the Addl. CIT and CIT (A) that there is absolutely no cash involved and the source can be traced to A/c payee cheques only. Addl. CIT has failed to refute this but only in order to strengthen his case on flimsy ground he makes a presumptive assertion that these entries has been passed to camouflage the sources and to evade tax.*
- d) *There is no attempt either in assessment order or in order to doubt the source of the entries and to take any consequential action under relevant provisions of the Income Tax Act. So, appellant's on source of entries being A/c payee cheque is correct."*

30. It is the submission of the assessee that the Hon'ble High Court has laid down the broad principles for determining the 'reasonable cause' within the meaning of section 273B of the Act. The judgment in the case of **Triumph International (I) Ltd** dated **12.6.2012** (this judgment is different from that of judgment of Triumph International (I) Ltd dated 17.8.2012) and it explains the guidelines for the expression **"reasonable cause"**.

31. The contents of paras 23 and 24 of the said of judgment of the Hon'ble High Court in the case of *Triumph International (I) Ltd, dated 12.6.2012* reported in 345 ITR 370 (Bom) are relevant and the same reads as under:

*"23. The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under Section 271E would have to be construed liberally depending upon the facts of each case.*

*24. In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account-payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an **empty formality** to repay the loan/deposit amount by account-payee cheque/draft and receive back almost the same amount towards the sale price of the shares. **Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted** in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee. The fact that the assessee company belongs to the Ketan Parekh Group which is involved in the securities scam cannot be a ground for sustaining penalty imposed under Section 271E of the Act if reasonable cause is shown by the assessee for failing to comply with the provisions of Section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also*

*one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under Section 271E of the Act deserves acceptance."*

32. From the above extracts from the judgment of jurisdictional High court, it is clear that the journal entries are hit by the relevant provisions of section 269SS of the Act. However, it is the finding of the Hon'ble High court that completing the "empty formalities" of payments and repayments by issuing/receiving cheque to swap/squre up the transactions, is not the intention of the provisions of section 269SS of the Act, when the transactions are otherwise bonafide or genuine. Such reasons of the assessee constitute 'reasonable cause' within the meaning of section 273B of the Act. In the light of the above ratio of judgment, we analyse the facts of the present case here as under.

33. We find that there is no finding of AO in the order of the AO during the assessment proceedings that the impugned transactions constitutes **unaccounted money** and are not **bona fide** or not **genuine**. As such, there is no information or material before the AO to suggest or demonstrate the same. In the language of the Honble High court, *'neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the **ordinary course** of business has been doubted in the regular assessment.* Admittedly, the transactions by way of journal entries are aimed at the extinguishment of the mutual liabilities between the assesseees and the sister concerns of the group and such reasons constitute a reasonable cause.

34. In the present case, the causes shown by the assessee for receiving or repayment of the loan/deposit otherwise than by account-payee cheque/bank draft, was on account of the following, namely: alternate mode of raising funds; assignment of receivables; squaring up transactions; operational efficiencies/MIS purpose; consolidation of family member debts; correction of errors; and loans taken in case. In our opinion, all these reasons are, *prima facie*, commercial in nature and they cannot be described as non-business by any means. Further, we asked ourselves as to why should the assessee under consideration take up issuing number of account payee cheques / bank drafts which can be accounted by the

journal entries. This being the spirit of Hon'ble High Court of Bombay, we adopt the same to the present issue. As such, the same is binding on us. What is the point in issuing hundreds of account payee cheques / account payee bank drafts between the sister concerns of the group, when transactions can be accounted in books using journal entries, which is also an accepted mode of accounting? In our opinion, on the factual matrix of these cases under consideration, journal entries should enjoy equal immunity on par with account payee cheques or bank drafts. Of course, the above conclusion apply so long as the transactions are for business purposes and do not involve unaccounted money and they are genuine. In fact, such journal entries shall save large number of cheque books for the banks.

35. Further, There is no dispute that the impugned journal entries in the respective books were done with the view to raise funds from the sister concerns, to assign the receivable among the sister concerns, to adjust or transfer the balances, to consolidate the debts, to correct the clerical errors etc. In the language of the Hon'ble High court, the said 'journal entries' constitutes one of the recognized modes of recording the loan/deposit. The commercial nature and occurrence of these transactions by way of journal entries is in the normal course of business operation of the group concerns. In this regard, there is no adverse finding by the AO in the regular assessment. AO has not made out in the assessment that any of the impugned transactions is aimed at non commercial reasons and outside the normal business operations. As such, the provisions of section 269SS and 269T of the Act shall not be attracted where there is no involvement of the 'money' as held by the Hon'ble High Court of Delhi in the above cited cases, *supra*. Therefore, in the facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269SS / 269T of the Act in respect of journal entries, the assessee has shown reasonable cause and, therefore, the penalty imposed under Section 271D/E of the Act are not sustainable. Regarding an amount of 'money' said to have been paid in violation of the said provisions, the same needs to be deleted in view of our decision on the legal issue discussed in para 16 to 22 of the this order. Accordingly, the grounds raised in this regard are **allowed**.

1. I.T.A. No.475/M/2014 (AY 2009-10) (Lodha Properties Development Pvt Ltd)
2. I.T.A. No.477/M/2014 (AY 2009-10) (Asthavinayak Real Estate Pvt Ltd)
3. I.T.A. No.478/M/2014 (AY 2009-10) (Aadinath Builders Pvt Ltd)
4. I.T.A. No.479/M/2014 (AY 2009-10) (Ajitnath Hi-Tech Builders Pvt Ltd)
5. I.T.A. No.480/M/2014 (AY 2009-10) (Lodha Crown Buildmart Pvt Ltd)

36. All these appeals relate to the penalty u/s 271D of the Act. The facts, arguments and the legal propositions are identical, in principle, in all the five appeals under consideration. Therefore, our findings given in the context of the appeal in the case of **Lodha Builders P Ltd** (supra) are applicable to all the other five appeals of the assesseees. Accordingly, the grounds raised in these appeals under consideration are also **allowed**.

37. In the result, all the **7** appeals of the assesseees are **allowed**.

Order pronounced in the open court on 27<sup>th</sup> June, 2014.

Sd/-  
**(VIVEK VARMA)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 27.06.2014  
व.नि.स./ OKK, Sr. PS

Sd/-  
**(D. KARUNAKARA RAO )**  
लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**