

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

NEWSLETTER

Issue No. 11
November 2019



PUNE BRANCH OF
WIRC OF ICAI

(Subscribers copy not for sale)

PUNE BRANCH OF WIRC OF ICAI

Forthcoming Programmes

SR. NO.	DATE	SEMINAR NAME	VENUE	TIME	FEES	CPE HRS.
1.	24th December, 2019	Workshop on "GST" (GST New Returns)	ICAI Bhawan, Bibwewadi, Pune	5.00 pm To 8.00 pm	Rs. 400/- Plus GST	3 Hrs.
2.	25th December, 2019	Seminar on "Assessments of Demonetisation era"	ICAI Bhawan, Bibwewadi, Pune	5.00 pm To 8.00 pm	Rs. 400/- Plus GST	3 Hrs.
3.	29th December, 2019	Seminar on "Future of Internal Audit (Fraud, Risk & Analytics)"	ICAI Bhawan, Bibwewadi, Pune	9.00 am To 4.30 pm	Rs. 800/- Plus GST	6 Hrs.

Notes:-

- 1) Registrations half an hour before program timings mentioned above.
- 2) For online registrations & detailed programme structure visit www.puneicai.org
- 3) Spot Registration Fees will be charge 25% extra

Seminar on "Internal Audit Value Beyond Assurance"



CA. Murtuza Kachwala
Speaker



CA. Jignesh Thaker
Speaker



CA. C. V. Chitale
Speaker



CA. Prashant Daftary
Speaker



CA. Ruta Chitale
Speaker



Participants

Technovation - A Programme for Women CAs



CA. Ameya Shah
Speaker



Adv. Vicky Shah
Speaker



Ms. Manju Mittal
Speaker



CA. Rajendra Ponkshe
Speaker



Panelists L To R :- CA. Rasika Date, CA. Ruta Chitale, CA. Rekha Dhamankar, CA. Amruta Kulkarni



Participants

Chairperson's Communique

Respected Members,

Month of November always sets in a happy mood since almost all the audit work, income tax work is almost over exception being the Transfer pricing specialists and few others. This is a month where we can plan new things, learn latest issues, update ourselves about newer techniques etc. With this in mind, your branch also has planned various activities, courses and sessions. Despite the GST deadline still looming overhead I'm sure the members are keen to take a break from the routine.



CA. Ruta Chitale
Chairperson
Pune Branch of WIRC of ICAI

The month of December shall also witness a mega event for the students in the form of International students conference wherein students from even the SAARC countries shall be participating. You will be happy to know that the preparation and planning for the same is in full swing. The branch is very proud to have been selected to host this event. We are all looking forward to interact with the students. Kindly encourage your students to participate in this mega event of the year which is specially only for them. It would be worthwhile to note that the Board of studies team shall be present throughout the event and the students can definitely interact with them.

We recently had held an Investor awareness week program and we were happy to note the enthusiastic response of the participants. The unusual concepts such as Family Office and Trust, White collar crimes etc. were deliberated upon. We are definitely going to organize more such programs in future especially related to investments opportunities in the period of economic slowdown and also about various risks involved in investments. As mentioned hereinabove there is a mega conference for students but for the members we have organized a residential refresher course at Mahabaleshwar jointly with Satara branch. You will be happy to note that a GST National conference is also being held by Pimri Chinchwad branch for the benefit of members.

GST commissionerate is keen to organize an outreach program especially to popularize the Sabka Vishwas scheme. Similarly Pune has lot of cases related to Exemption sections of the Income Tax Act. As such the Income tax department has expressed its interest to conduct a specific session for Exemptions. We are in the midst of inviting Charity commissioner for the said program. Do lookout for the announcement.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

Awaiting your email at chairman@puneicai.org and/or message at my personal mobile number.

Warm Regards,
CA Ruta Chitale

MCA-CMS - AI Based Compliance Monitoring System

Contributed by :- CS Dhaval Gusani

Email :- dvg.pcs@gmail.com

Introduction

The Ministry of Corporate Affairs is nowadays heavily concerned about enhancing corporate compliance level and transparency among the companies and in this regard they have created "**Ministry of Corporate Affairs Compliance Monitoring System**" (**MCACMS**) which will be an **Artificial Intelligence based mechanism**. The intent is to make compliance scrutiny system driven and automated, thereby increasing compliance level and also *earn revenue through penalties as well!!!* Before introducing this portal, the Government changed the word '**Fine**' with the word '**Penalty**' so that MCA will get power to impose penalty on non-compliant companies.

What is MCA-CMS

Ministry of Corporate Affairs Compliance Monitoring System (**MCA-CMS**) is the newly introduced online Compliance tracing mechanism that works on Artificial Intelligence. This portal will catch non-compliance of any company automatically and send show-cause notices to the non-compliant companies/directors digitally. Such defaulting companies/directors will now be required to submit a reply to show-cause notices to the MCA on MCACMS Portal.

What is the need for MCA-CMS

There were numerous cases of non-compliance or delay in compliance by the companies which were either undetected or detected after a big scam happened. It is very difficult to monitor non-compliance through manual system or traditional scrutiny based method where we have more than 14 Lacs companies. Hence, it is a high time to have some A.I. based universal Compliance Monitoring System to detect non-compliance and would issue the Show Cause Notice to the defaulters.

The broad objects behind the introduction of MCA-CMS are as follows:

- To avoid any sort of negligence of the provisions of the Companies Act 2013, in respect of company incorporation, or annual compliance of the companies and LLPs;
- To detect any non-compliance early and issue show-cause notices to defaulting companies/directors;
- To give opportunity to companies/directors to give reply to show cause notice online;
- To increase overall compliance level in the country and to prevent shell companies to foster.

Show Cause Notice and its Reply

Upon failure to timely fulfill any sort of compliance, the MCACMS Portal shall send a show-cause notice via email to the defaulting Company/Director or the Company Secretary. This Show Cause Notice shall bear a CMS reference Number like **F.No. D/RC000/000/2019/00/11-11**.

The Show Cause Notice will mention following details

- Nature of non-compliance;
- Section under which the notice has been issued;
- Deadline for submitting the reply.

**"Negative attitude is like a punctured tyre, you can't reach anywhere until you change it."
So always think positive and be positive.**

The non-compliant company is supposed to serve it to its directors or KMPs. Thereafter the notice shall be deemed to have been served upon each & every officer for the non-compliance of the provisions of the Companies Act 2013.

The director of the non-compliant company to whom the showcause notice has been served, has to submit a reply to Show Cause Notice **within 15 days** from the date the notice.

The following is the **Procedure to reply Show Cause Notice issued by MCACMS:**

1. Login online to MCACMS Portal;
2. Click on Reply to Show Cause Notice;
3. Input CMS Reference number in portal;
4. Generate OTP; (it will be sent on registered email address)
5. Input OTP in MCACMS Portal;
6. Give reply in 500 words. If reply in more than 500 words it is advisable to print the same on Company letter head and authenticated by a Director/Company Secretary & submit as an attachment;
7. Submit reply & Record acknowledgment.

In case the director of the non-compliant company fails to submit a reply to Show Cause Notice, it would be assumed that the company has nothing to say regarding the matter. As a result, the Registrar of Companies (**ROC**) shall take penal actions on the company, for violation of the provisions of the Companies Act 2013.

Conclusion

MCA-21 has gone through various overhauling process during last 13 years. In May 2019, Government has announced that the Ministry of Corporate affairs is planning to implement a Version 3 of MCA for ease of doing process. The Version 3 will ease the process of filing details as single source of truth will ensure that common information will automatically get updated over various forms. Second, the entire e-adjudication process will go online. This will ensure that nobody is required to go to the ROC office. Everything will be on the front-end where entire e-adjudication and then online compliance monitoring would be done. So if anyone is not complying with the law, e-notice will automatically get generated and reach him.

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Seminar on "GSTR 9 & 9C"



CA. Swapnil Munot
Speaker



Participants



CA. Ravi Kumar Somani
Speaker



Felicitation



Participants



Campus for Newly Qualified Chartered Accountants (NQCAs)

February-March, 2020

Maintaining strong and spontaneous relationship with the industry and other business houses remains the main focus of the Committee for Members in Industry & Business (CMI&B) of the Institute of Chartered Accountants of India (ICAI). An initiative to that effect remains the Campus Placement Programme (held twice a year) that provides a platform to both the NQCAs and the organizations looking to hire the best available talent to fulfil their human resource requirement. ICAI simply acts as a facilitator to bring the recruiter and NQCAs together.

Invitation to Organisations- Any corporation, irrespective of its size, standing in the market and boundary of its business, can take part in this placement programme being held at several centers across the country during February- March, 2020.

Campus Interview Schedule

Sr. No.	Centres	Dates
1	Mumbai & New Delhi	28th, 29th February, 2nd, 3rd, 4th, 5th March, 2020
2	Chennai	2nd, 3rd, 4th, 5th & 6th March, 2020
3	Kolkata	3rd, 4th, 5th, 6th & 7th March, 2020
4	Ahmedabad, Jaipur, Pune & Hyderabad	4th, 5th & 6th March, 2020
5	Bengaluru	4th, 5th, 6th, 7th & 8th March, 2020
6	Durgapur & Ernakulam	28th March, 2020
7	Bhubaneswar, Noida, Chandigarh, Coimbatore, Indore, Kanpur & Thane	30th & 31st March, 2020

Invitation to Candidates: The above Campus is meant for the candidates, who would be passing the CA Final examination held in Nov, 2019 and also for others who have qualified earlier and are fulfilling the criteria mentioned in the Announcement.

Organizations intending to recruit NQCAs through campus scheme are requested to get in touch with the CMI&B Secretariat, ICAI Bhawan, Indraprastha Marg, New Delhi -110002, and e-mail: campus@icai.in, Tel. No. (011) 30110555/491/525/450/526/548 and to register log on to <https://cmib.icai.org/>.

Candidates may e-mail at cajob@icai.in, Tel. No. (011)30110555/491/525/450/526/548 and to register log on to <https://cmib.icai.org/>.

Chairman
Committee for Members in Industry & Business (CMI&B)
The Institute of Chartered Accountants of India

Organised By:

Committee for Members in Industry & Business (CMI&B)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

'ICAI BHAWAN', Post Box No.: 7100, Indraprastha Marg, New Delhi – 110002

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Some Interesting Aspects of Penalty U/S 271D r.w.s 269SS of The Income-Tax Act, 1961 (PART -1)

Contributed by :- CA. Bhuvanesh Kankani

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Penalty under section ('u/s') 271D the Income-tax Act, 1961 ('The Act') is imposed upon contravention of provisions of section 269SS of the Act. In this article, an attempt has been made to touch upon certain aspects not usually discussed but at the same time are of utmost importance for imposition of penalty u/s 271D of the Act. There are many questions which revolve around the issue of penalty u/s 271D, like

Q.1 Who can initiate penalty proceedings?

Q.2 Is there any time limit for initiation of penalty proceedings u/s 271D?

Q.3 What is the time limit as per section 275 for imposing penalty u/s 271D?

Q.4 Whether journal entries are covered by section 269SS?

Q.5 Whether advances are covered by section 269SS?

Q.6 Whether money received from members of co-operative society or partners of firm partake the nature of loan?

Q.7 Whether, in case of penalties above Rs. 20,000/-, penalty be reduced by Rs.20,000?

Q.8 Whether penalty can be imposed in case of amount to be taxed as undisclosed income?

Q.9 Whether penalty can be levied on mere surmises or incomplete evidences?

Q.10 Whether provisions of section 269SS r.w.s 271D and 273B will apply in case of genuine transaction?

Q.11 Whether mere existence of genuine or bonafide transaction is sufficient to attract relief u/s 273B of the act or whether it has to be established that on account of some bonafide reasons the assessee could not get loan/deposit by account payee cheque or account payee bank draft ?

(Question no 5 onwards will be published in the next month news letter)

Before starting analysis of above select aspect of section 271D lets first go through the provision of section 271D and section 269SS of the Act.

Section 271D

271D. (1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

From the provision of section 271D following aspects can be observed.

- a. Contravention of section 269SS is a must.
- b. Person contravening shall pay Penalty.
- c. Amount of penalty is equal to loan taken or deposit accepted.
- d. No income-tax authority other than **JOINT COMMISSIONER ('JCIT') CAN IMPOSE PENALTY** i.e. penalty proceedings under these this section will take place before the Joint Commissioner.

Section 269SS

269SS. No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

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

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

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

(a) the Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.—For the purposes of this section,—

(i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;

(iii) "loan or deposit" means loan or deposit of money;

(iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

From the provision of section 269SS following aspects must be observed -

a. Loan or deposit should have been taken or accepted from **ANOTHER PERSON.**

b. **LOAN OR DEPOSIT OR SPECIFIED SUM IS TAKEN** by mode other than an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

c. **ALLOWABLE LIMIT** of taking cash loan /deposit/Specified Sum **IS RS. 20,000/-.**

d. Loan or deposit means Loan or deposit of **MONEY.**

e. Provisions not applicable where paying and receiving party have agricultural income and have no other income chargeable to tax.

NOW, LET'S MOVE AHEAD TOWARDS SOME INTERESTING ASPECTS OF THESE TWO PROVISIONS AND RELATED SECTIONS LIKE 275 AND 273B.

Q. WHO CAN INITIATE PENALTY PROCEEDINGS ?

For penalties pertaining to section 271(1) of the Act, there is a specific requirement that the AO, CIT (A), PCIT or CIT only can initiate the penalty proceedings in the course of any proceedings under the act. But, with regard to initiation of penalty under section 271D of the Act there is no such categorical requirement expressly provided in the Act. However, there is a requirement that penalty u/s 271D can only be imposed by JCIT. Since there is no condition stipulated for initiation but only for imposition there have been contradictory views and rulings as under,

- Some courts are of the view that penalty proceedings u/s 271D initiated by assessing officer is also valid, the justification put forward are as under:

- There is no specific provision in the Act with regard to initiation of penalty proceedings u/s 271D. So, if an AO has sent the show cause notice u/s 271D r.w.s 274, it will be considered as initiation of penalty proceedings.

- It has been argued that the words 'Initiation' does not mean 'to impose', so power to initiate can be with the Assessing Officer also. [Hissaria Brothers v. Jt. CIT (2001) 73 TTJ (Jd) 1. & Dillu Cine Enterprises (P) Ltd. v. Addl. CIT (2002) 80 ITD 484 (Hyd)].

- Levy of penalty was held to be barred by limitation. [S. 153A, 269SS, 269T, 271D, 271E, 275 (1) (c)] Dismissing the appeal of the revenue, the Court held that; under section 275 (1) (c) of the Income-tax Act, 1961, the starting point of "initiation" of penalty proceedings, would be the date on which the Assessing Officer wrote a letter to the Additional Commissioner recommending the issuance of the notice. Though the Additional Commissioner had the discretion whether or not to issue a notice, if he did decide to issue a notice, the limitation would begin to run from the date of the letter sent by the Assessing Officer recommending "initiation" of the penalty proceedings. In the assessee's case, the limitation under section 275 (1) (c) began to run on July 23, 2012 and the last date for passing the penalty orders was January 31, 2013. Therefore, the penalty orders issued on February 26, 2013 were barred by limitation. No question of law arose. (AY.2009-10) PCIT v. Mahesh Wood Products Pvt. Ltd. (2017) 394 ITR 312/154 DTR 154 (Delhi) (HC)

- Whereas, some courts are of the view that since the power to impose penalty is with the JCIT, the power to initiate the penalty proceedings automatically rests with JCIT.

- If AO cannot impose penalty, the satisfaction recorded by the AO to initiate is of no use. It is the satisfaction of JCIT only which would have weightage in imposing penalty.

- If AO initiates the penalty proceedings and if he makes delay in referring the matter to JCIT for imposing penalty, then the time period provided by section 275 of the Act may get adversely affected.

- In case of Youth Development Co-op. Credit Society Ltd. v. Jt. CIT in ITA No. 1529/Pn/2002 and ITO vs Ramnivas Agrawal (2004) 89 TTJ Nag 795 it was held that it is only the JCIT who can initiate the proceedings for levy of penalty u/s 271D as he only has the power to impose the same. To justify this, Hon'ble Nagpur bench had stated that, satisfaction recorded by the AO to initiate the penalty proceedings u/s 271D is of no use when the penalty is not to be levied by him but by someone else i.e. JCIT. Thus, initiation could be made only by JCIT. Thus the time period to check the limitation for completing penalty proceedings starts from the end of the month in which JCIT issues show cause notice u/s 274 r.w.s 271D of the Act.

Further, Hon'ble Chandigarh ITAT in case of Dewan Chand Amrit Lal v/s. DCIT (2006) (AT) 2003 Chandigarh (SB) have negated the decisions in case of Hissaria brother (Supra) and Dillu Cine enterprises (Supra), Hon'ble court has held as under,

"28. In the final analysis, we hold that the authority competent to impose penalty under Sections 271D and 271E is vested with the Dy. CIT (now Jt. CIT) and the AO does not have the power either to initiate the penalty proceedings or impose the same. There is no procedure for reference by the AO to the competent authority for imposition of penalty under Section 271D or 271E. Therefore, the limitation for completion of penalty proceedings as provided under Section 275(1)(c) has got to be computed from the date of issue of show-cause notice by the competent authority, which in the present case, is the Dy. CIT (now Jt. CIT). Since the respective orders under Section 271D have been passed within a period of six months from the date of initiation by the competent authority, the penalty orders passed in the cases of the appellants herein are not barred by limitation.

29. In the light of our decision, for the detailed reasons given earlier, we hardly need to mention that whereas we agree with the view expressed by Tribunal, Chandigarh Bench, in the case of Asstt. CIT v. Shree Nivas Chemicals (supra) and the Nagpur Bench of the Tribunal in the case of ITO v. Ramnivas Agrawal (supra), we do not agree with the view expressed by Hyderabad Bench of the Tribunal in the case of Dillu Cine Enterprises (P) Ltd. v. Addl. CIT (supra) and Jodhpur Bench of the Tribunal in the case of Hissaria Brothers v. Jt. CIT (supra) and the Delhi Bench of the Tribunal in the case of Farrukhabad Investment (I) Ltd. v. Jt. CIT (supra)."

Looking at the controversy, CBDT came out with the following circular wherein it was stated that penalty proceedings u/s 271D be construed to have been initiated only after the JCIT issues Show cause notice u/s 274 r.w.s 271D of the Act. (the circular is as under)

Circular No. 09/DV/2016
(Departmental View)
F.No.279/Misc./M-116/2012-IT J
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 26th April, 2016

Subject: - Commencement of limitation for penalty proceedings under sections 271D and 271E of the Income tax Act, 1961 – reg.

It has been brought to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that there are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E of the Income tax Act, 1961 (hereafter referred to as the Act) commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income Tax.) or at level of the Range authority i.e. the Joint Commissioner of Income Tax./Addl. Commissioner of Income Tax.

Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty i.e. Range Head while others have held that even though the Assessing Officer is not competent to impose the penalty, the limitation commences at the level of the Assessing Officer where the Assessing Officer has issued show cause notice or referred to the initiation of proceedings in assessment order.

2. On careful examination of the matter, the Board is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a "Departmental View".

3. The Hon'ble Kerala High Court in the case of Grihalaxmi Vision Addl. Commissioner of Income Tax, Range 1, Kozhikode, vide its order dated 8.7.15 in ITA Nos. 83 & 86 of 2014, observed that, "Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply."

4. The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed u/s 275(1)(c) of the Act.

5. Where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee. The CTC shall examine the said judgment on priority to decide as to whether filing of Special Leave Petition (SLP) to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

6. The above clarification may be brought to the notice of all officers.

Sadhana Panwar
DCIT (OSD) (ITJ)
CBDT, New Delhi

Q. IS THERE ANY TIME LIMIT FOR INITIATION PENALTY PROCEEDINGS U/S 271D?

Given the legal matrix that the power to impose penalty is with JCIT, so power to initiate also rests with JCIT and the Assessing officer has no intrusion in initiating penalty. Unlike proviso to section 143 (2) or section 149 wherein time limits for initiating assessment are enshrined, there is no provision in the act which stipulates time limit for initiating penalty proceeding u/s 271D.

That is to say, JCIT at his own sweet-will can initiate the penalty proceedings u/s 271D at any time for any assessment year even after indefinite period. It is only the imposition of penalty which has time barring once initiated [as per section 275]

Above stated legal position was even highlighted by Hon'ble Nagpur ITAT in case of ITO vs Ramnivas Agrawal (2004) 89 TTJ Nag 795 whereby Hon'ble bench made following comment,

'It is true that this interpretation adopted by us would also lead to a situation where an officer imposing penalty can initiate penalty even after an indefinite period of time. But in view of the language of the provisions, we have no other option but to uphold such a power. We, therefore, hold that the penalty proceedings were initiated only on 2-5-2000, when the Addl. CIT issued a show-cause notice.'

Also, Hon'ble Mumbai tribunal in case of ACIT Vs. Shri. Parag Doshi (ITA no.1836/Mum/2009 had held the same relying on Special bench's decision in case of Dewan Chand Amrit Lal v/s. DCIT (2006) (AT) 2003 Chandigarh (SB) wherein it was held that no time limit has been prescribed for initiating penal action in respect of acceptance and return of loan in Shri Parag A. Doshi cash infringing Sec. 269SS and Sec. 269T of the I.T. Act. The Hon'ble Special Bench has considered the issue and held that: -

"Thus, it appears that the Legislature has not considered it necessary to provide limitation for initiation of penalty proceedings under sections 271D and 271E. It becomes more probable when one considers the intention of the Legislature behind incorporation of provisions of sections 269SS and 269T. The intention behind incorporation of these provisions Shri Parag A. Doshi was to counter the proliferation of black money, which when found in the course of search is sought to be explained by cash loans from various persons. As such, there is no time-limit for conducting searches. When in the course of search, some information is found about cash loans or deposits or repayment of loans or deposits or such claims are made, the necessity for initiating proceedings under section 271D or 271E arises. If one were to compute the limitation with reference to the assessment proceedings, then in no case, penalty under section 271D and 271E could be initiated in the case where the information is gathered in the course of search. That would defeat the very purpose of the legislating the provisions of sections 271D and 271E. Looking from the background which gave rise to incorporation of sections 269SS, 269T, 271D and 271E, the Legislature has consciously not prescribed any limitation for initiation of penalty proceedings under sections 271D and 271E. The limitation, of course has been prescribed for imposition after its initiation by the competent authority".

Q. WHAT IS THE TIME LIMIT AS PER SECTION 275 FOR IMPOSING PENALTY U/S 271D?

As discussed above that the power to initiate penalty proceedings u/s 271D rests with JCIT only. Accordingly, the time limit for imposing penalty as provided by section 275 of the Act will be reckoned from the point when JCIT initiates the penalty proceedings.

Further, section 275 provides time limits for different situations, Viz.

- Where appeal is preferred against the relevant assessment order or other order in the course of which penalty proceeding is initiated (clause a) or
- Where the assessment order is subject matter of revisions u/s 263 or 264 of the Act (clause b) or,
- In other matters (clause c).

In the instant case, where question is with regard to imposing penalty u/s 271D, there is no connection with the assessment of the income as penalty under this section is independent of the income being assessed. Thus, no matter the assessment order of the assessee is in appeal, penalty under this section i.e. 271D is to be levied as per clause (c) of section 275(1) i.e.

- within the end of financial year in which proceedings, during the course of which action for imposing penalty were initiated, gets completed or
- within the end of six months from the end of the month in which penalty proceedings were initiated, whichever is later.

To this effect CBDT came out with the circular (reproduced herein under) wherein it was directed that provision of clause (c) of section 275(1) be made applicable in penalty matters of section 271D & 271E, and had further instructed to withdraw related appeals.

**CIRCULAR NO.10/2016
[F.NO.279/MISC./M-140/2015-ITJ],
DATED 26-4-2016**

1. The issue whether the limitation for imposition of penalty under sections 271D and 271E of the Income-tax Act, 1961, (hereinafter referred to as the Act) is determined under section 275(1)(a) or section 275(1)(c) of the Act, has given rise to considerable litigation.
2. The Hon'ble Delhi High Court in the case of Commissioner of Income Tax v. Worldwide Township Projects Ltd.¹, vide its order dated 21-5-2014 in ITA No. 232/2014, considered the issue and observed that, "It is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of Section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. In this view Section 275(1) (a) of the Act would not be applicable and the provisions of Section 275(1) (c) would be attracted. "The judgment has been accepted by the Central Board of Direct Taxes.
3. In view of the above, it is a settled position that the period of limitation of penalty proceedings under sections 271D and 271E of the Act is governed by the provisions of section 275(1)(c) of the Act. Therefore, the limitation period for the imposition of penalty under these provisions would be 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. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1) (a) of the Act.
4. Accordingly, no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this issue before various Courts/Tribunals may not be pressed upon.
5. The above may be brought to the notice of all concerned.

The aspect which should also be looked is, whether 'relevant assessment order' means assessment order of the same assessee or of someone else also. The relevance could be easily drawn from following example, say penalty proceeding u/s 271D is initiated, and imposed within 6 months, against Mr. X during the course of assessment proceedings of Mr. A wherein it was alleged that Mr. A has given cash loan to Mr. X out of his unaccounted income. However, in appeal preferred by Mr. A, against the addition made in his case, appellate authorities deleted said addition after two years. In such cases, it would be in the interest of justice that penalty proceedings should have been kept in abeyance till disposal of appeal matter of Mr. A since penalty is directly dependent on the assessment of Mr. A.

As mentioned in example if the said allegations are not proved against Mr. A, then the question of lending money does not arise and accordingly subsequent question of Mr. X accepting cash loan cannot arise i.e. penalty order becomes infructuous. Thus, in such cases, it would be of utmost importance that the time barring should be as per clause (a) which would serve the true purpose of section 275(1) (a).

NOW, BEFORE APPROACHING TOWARDS OTHER ASPECTS OF PENALTY FOR BREACH OF SECTION 269SS, LET US LOOK INTO THE MEMORANDUM FOR INTRODUCING THIS SECTION VIDE FINANCE ACT 1984 -

"Unaccounted cash found in the course of searches carried out by the Income tax department is often explained by tax payers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits and tax payers are also able to get confirmatory letters from such persons in support of their explanation.

With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS in the Income tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft....."

So basically the purpose behind introducing this provision was to curb the practise of giving false explanation about the cash or unaccounted deposits found during the search actions. This being the intention for inserting this new section in FA 1984, let's move ahead towards the other aspects.

Q. WHETHER JOURNAL ENTRIES COVERED BY SECTION 269SS?

As highlighted above that the loans or deposits means loan or deposits of money (same in case of specified sum), any loan entry reflecting by mode of Journal entry should not attract the provisions of this section. Further, as can be observed from the memorandum (reproduced above) the intention behind bringing such provision was to curb the practise of raided parties to give false explanation regarding the Money or deposits found. That is to say, there should be actual real money flowing in.

Relevant case law:

The premises of K, a director of the assessee company were searched by the Income Tax Authorities. During the course of search, incriminating documents regarding unaccounted expenditure incurred by K were seized. In the proceedings initiated under section 153C, K offered for tax the undisclosed expenditure incurred by him for and on behalf of the company for construction activities. Accordingly journal entries were passed in the books of the company. Assessing Officer was of the opinion that the assessee company has violated section 269SS and accordingly levied the penalty but the Tribunal deleted the penalty. High Court confirmed the order of Tribunal. CIT v. Motta Construction P. Ltd. (2011) 338 ITR 66 (Bom.)(High Court)

Part-2 will be continued in newsletter—

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