

Penalty proceedings start with the notice, not AO's proposal to Addl. CIT

INCOME TAX :Action for imposition of penalty proceedings is initiated, when Assessing Officer imposing penalty issues notice under section 274 read with sections 271D and 271E and not when Assessing Officer sends a proposal to Joint/Additional Commissioner for imposition of penalty

Where assessee could not explain as to why loans and advances received in cash from Managing Director, penalty levied under section 271D was justified

I. Section 275, read with sections 271D and 271E of the Income-Tax Act, 1961 - Penalty - Bar of limitation for imposition of (General) - Assessment year 2012-13 - Whether action for imposition of penalty proceedings is initiated, when Assessing Officer imposing penalty issues notice under section 274 read with sections 271D and 271E and not when Assessing Officer sends a proposal to Joint/Additional Commissioner for imposition of penalty - Held, yes Assessing Officer sent a proposal for initiation of penalty proceedings vide letter dated 24-7-2018 - Additional Commissioner initiated penalty proceedings by issuance of notice under section 274 read with sections 271D and 271E, dated 3-8-2018 - Accordingly, Assessing Officer passed an order imposing penalty on 26-2-2019 -Whether since order passed by Assessing Officer imposing penalty was within six months from end of month, in which, action for imposition of penalty was initiated, same was not barred by limitation - Held, yes [Para 12] [In favour of revenue]

II. Section 269SS, read with sections 269TT, 271D, 271E and 273B of the Income-Tax Act, 1961 - Deposits - Mode of accepting/taking (Reasonable cause) - Assessment year 2012-13 - Assessee had accepted loans and advances from its Managing Director (MD)- Assessing Officer levied penalty under sections 271D and 271E for contravention of provisions of sections 269SS and 269TT for accepting and re-paying loans and advances in cash - It was observed that assessee could not explain as to why loans and advances had been received in cash - Further, assessee received a sum of Rs.18 lakhs from MD on 14-9-2011, even though, assessee had more than Rs.11 lakhs cash in hand as on that date in books of accounts - Whether, therefore, since assessee could not explain reasonable cause for accepting loans and advances in cash in contravention of provisions of section 269SS and 269TT, penalty levied under section 271D and 271E was justified - Held, yes [Paras 13 and 14] [In favour of revenue]

Pl. click below link for the judgment:

<https://www.taxmann.com/research/direct-tax-laws/top-story/101010000000341998/penalty-proceedings-start-with-the-notice-not-aos-proposal-to-addl-cit-caselaws>

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