

F.No.279/Misc./M-116/2012-ITJ

**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 v. Addl. Commissioner of Income Tax, Range 1, Kozhikode¹, 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*

¹ Available in NJRS 2015-LL-0807-4

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 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 26/4/16
(Sadhana Panwar)
DCIT (OSD) (ITJ),
CBDT, New Delhi.

Copy to:

1. The Chairman, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Pr. Director General of Income-Tax, NADT, Nagpur.
5. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
6. The Pr. DGIT (Vigilance), New Delhi.
7. The ADG (PR, PP & OL), Mayur Bhawan, New Delhi for printing in the quarterly tax bulletin and for circulation as per usual mailing list.
8. The Comptroller and Auditor General of India.
9. The ADG-4 (Systems) for uploading on ITD website.
10. Data Base Cell for uploading on irsofficersonline.
11. Guard file.

o/c

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