

**IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY CIVIL JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

WPO/287/2025

MERLIN PROJECTS LIMITED
VS
JOINT COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE CENTRAL RANGE -2 KOLKATA AND ORS

For the petitioner : Mr. S. N. Mookherjee, Sr. Adv.
Mr. Abhratosh Majumder, Adv.
Mr. Pratyush Jhunhunwala, Adv.
Mr. Naman Choudhury, Adv.
Ms. Akshara Shukla, Adv.
Mr. Aritra Nag, Adv.

For the respondent : Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.

Heard on : 22.05.2025.

Judgment on : 22nd May, 2025.

RAJA BASU CHOWDHURY, J:

1. The above writ petition has been filed, *inter alia*, challenging the show cause notice dated 4th January, 2025 issued under Section 274 read with Section 271D of the Income Tax Act, 1961 (hereinafter refer to said 'Act') and the consequential demand cum order dated 29th March, 2025 issued under Section 271D of the said Act.

2. The date of the show-cause notice, the corresponding date of the order with relevant section and the corresponding assessment year is extracted hereinbelow:

WPO No.	Date of show-cause	Date of order/demand with relevant section	Assessment Year
287 of 2025	04.01.2025	29.03.2025 under Section 271D	2016-17

3. The central issue for consideration in the above writ petition is whether the Assessing Officer is bound to record satisfaction in the assessment order as regards the contravention of the provisions of Section 269SS of the said Act for initiation of proceeding under Section 271D of the said Act. Records would reveal that an assessment order under Section 143(3) read with Section 153A of the said Act dated 31st March, 2022, in respect of the assessment year 2016-17 was passed in the petitioner's case. Following the aforesaid, the show-cause notice as aforesaid had been issued under the provisions of Section 271D of the said Act, on account of contravention of the provisions of Sections 269SS of the said Act.
4. Immediately upon receipt of such show-cause notice, the petitioner by response in writing had called upon the department to disclose the certified copy of the order-sheet recording the reasons/satisfaction of the Assessing Officer, which promoted issuance of show-cause notice.

Records would reveal that the department by a written response had, *inter alia*, held out that all penalty proceedings initiated against the assessee had been carried out through ITBA system of the department, which is also visible to the assessee.

5. Records would also reveal that the petitioner had contradicted the same by a written communication enclosing therein screen shots from the portal to demonstrate that no order or satisfaction had been uploaded on the portal.
6. It is the petitioner's case that the department without adhering to the petitioner's request to disclose the satisfaction note had proceeded to pass the order under Sections 271D of the said Act in respect of the relevant assessment year as noted above.
7. Mr. Mookherjee, learned Senior Advocate appearing in support of the writ petition has drawn the attention of this court not only to the show-cause notice but also to the response filed by the petitioner thereto, to highlight the fact that the recording of satisfaction, contrary to the claim made by the respondents was not available on the portal. He would submit that by a CBDT Circular No.09/DV/2016 dated 26th April, 2016, a clarification has been provided not only with regard to the departmental view as regards initiation of penalty proceeding but to bring an uniformity and to remove conflict in the procedure to be followed by the Assessing Officers below the rank of Joint Commissioner of Income Tax,

while making a reference to the Range Head regarding any violation of provisions of Section 269SS and 269T of the said Act, as the case may be, in course of the assessment proceeding or any other proceeding under the said Act.

8. According to him, in absence of the satisfaction being recorded by the Assessing Officer regarding contravention of Section 269SS of the said Act for initiation of penalty proceedings under the provisions of section 271D of the said Act, independent penalty proceeding, independent of such satisfaction could be initiated. In support of his aforesaid contention that in absence of satisfaction regarding contravention of the provisions of Section 269SS of the said Act, by the Assessing Officer, no penalty proceeding can be initiated under section 271D of the said Act and no penalty could be levied, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Panchkula vs. Jai Laxmi Rice Mills Ambala City*** reported in **(2015) 64 taxman.com 75 (SC)**. He has also placed reliance on the judgment delivered by the Hon'ble High Court at Andhra Pradesh in the case of ***Grandhi Sri Venkata Amarendra vs. Joint Commissioner of Income Tax*** reported in **(2024) 167 taxman.com 352 (Andhra Pradesh)**.
9. On the question whether this Hon'ble Court is competent to entertain the writ petition, notwithstanding there being an alternative remedy in the form of an appeal he has placed reliance on a judgment delivered in the

case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai*** reported in **(1998) 8 SCC page 1** and the judgment delivered by the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd. vs. Excise of Taxation Officer-cum-Assessing Authority And Others*** reported in **(2023) 109 GSTR 402 : 2023 SCC Online SC 95**. In the facts of the case hereinabove, he would submit that the order impugned as also the penalty proceeding cannot be sustained and the same be quashed.

10. *Per contra*, Mr. Bhattacharjee learned advocate representing the respondents, at the very outset, would submit that the petitioner has an alternative efficacious remedy in the form of an appeal from the order passed in the penalty proceeding under Section 271D of the said Act, before the appellate authority in terms of the provisions contained in 246A of the said Act. He would submit that ordinarily when an efficacious alternative remedy is available, a Court exercising writ jurisdiction under Article 226 of the Constitution of India should not entertain the same. According to Mr. Bhattacharjee since the matter would require examination of the assessment order in the form of evidence, this Court should not entertain the writ petition. In support of his aforesaid contention, he has placed reliance on the Constitutional Bench judgment delivered by the Hon'ble Supreme Court in the case of ***Thansingh Nathmal vs. Superintendent of Taxes, Dhubri & Ors.*** reported in **AIR 1964 SC 1419**, the judgment delivered in the case of ***Commissioner of Income Tax vs. Chhabil Dass Agarwal*** reported in

(2013) 36 taxman.com 36 (SC) taxman and the judgment delivered in the case of ***Whirlpool Corporation*** (*supra*). Independent of the aforesaid, by placing reliance on the circular issued by the CBDT (*supra*), he would submit that paragraph 4 of the aforesaid circular clarifies the position, that the advisory is not confined to the assessment proceeding but is also in respect of other proceeding under the said Act. According to him, the assessment proceeding under the said Act are distinct and different from the penalty proceeding and independent of the assessment proceeding a penalty proceeding cannot be initiated. As such in ordinary course there is no requirement for recording satisfaction by the Assessing Officer as regards contravention of the provisions of Section 269SS of the said Act for initiating proceedings under Section 271D of the said Act. In the facts noted hereinabove, he would submit that this Court should not entertain the writ petition. In addition to the above, it is submitted that the point raised by the petitioner does not constitute a jurisdictional issue for this Court to entertain the same and in any event, if the Hon'ble Court by overruling the objection raised by the respondents admits the writ petition, the petitioner should be put to terms especially having regard to the fact that the petitioner had not cooperated with the Department in the penalty proceeding and had not offered any explanation on merits.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record including the supplementary affidavit filed in Court today which is taken on record. From the

argument advanced by the advocates representing the respective parties, it would transpire that the primary issue that falls for consideration in the present writ petition is whether the Department was competent to initiate the penalty proceedings under Section 271D of the said Act without there being a satisfaction of the Assessing Officer as regards the contravention of the provision of Section 269SS of the said Act. However, before a proceeding to adjudicate the above issue, having regard to the objection raised by the respondents with respect to the maintainability of the writ petition, I am of the view, such issue should be considered first.

12. I find that it is the respondents' contention that having regard to the statutory remedy in the form of an appeal available to the petitioner, this Court should not exercise the jurisdiction. There is no dispute that the petitioner has an alternative remedy in the form of an appeal from the order impugned. It is equally true that the petitioner had raised the jurisdictional issue as regard the competence of the Department to initiate a penalty proceeding under Sections 271D of the said Act. I find that Mr. Bhattacharjee by placing reliance on the judgment delivered in the case of **Thansingh Nathmal** (*supra*) has tried to impress upon this Court that when an alternative remedy in the form of a statutory appeal is available ordinarily this Court should not entertain the writ petition. I am of the view, that there cannot be any doubt that an alternative remedy would stand in the way of a Writ Court exercising its jurisdiction unless the petitioner is in a position to demonstrate that either the

alternative remedy is inefficacious or the petitioner comes within the exception, as enumerated in the judgment delivered in the case of **Whilpool Corporation** (*supra*). I find that the Hon'ble Supreme Court in the case of **Thansingh Nathmal** (*supra*) had refused to entertain the petition not merely on the ground that an alternative remedy was available but on the ground that the question of facts which were raised before the Hon'ble Supreme Court were not canvassed before the appropriate taxing authority. In fact as highlighted in paragraph 8 of such judgment the assessee in such case had attempted to reopen the decision of the taxing authorities on the question of fact, by invoking the jurisdiction under Article 226, which jurisdiction by the statute constituting them is exclusively vested in the taxing authorities. The above judgment thus, does not assist the respondents. Mr. Bhattacharjee next relied on a judgment delivered in the case of **Chhabil Dass Agarwal** (*supra*) where in the matter dealt with a challenge to a notice issued under section 148 of the said Act under the old regime that is prior to introduction of the Finance Act, 2021 with effect from 1st April 2021. Following the aforesaid an assessment order was passed, aggrieved the assessee without exhausting the statutory remedy had approached the writ Court. In the said case the Hon'ble Supreme Court had held that a complete machinery for the assessment/reassessment of tax, imposition of penalty had been provided in the statute and having regard thereto the Hon'ble Court has refused to entertain the writ petition. In

my view, challenge to an assessment order ordinarily would require detailed enquiry on facts. Such is not the case here. The above judgment does not assist the respondents as well.

13. In so far as the judgment delivered in the case of **Whirlpool Corporation** (*supra*) is concerned, the Hon'ble Supreme Court in paragraph 15 of such judgment has been inter alia pleased to observe as follows:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. Bu the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed nfor the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case –law on this point but to cur down this circle or forensic whirlpool, we would rely on some old decision s of the evolutionary era of the Constitutional law as they still hold the field”

14. From the above it will be aptly clear that in case the jurisdictional issue is raised the Court ordinarily does not refuse but accept the challenge to the same. Before proceeding further I must note that the

Hon'ble Supreme Court in the recent judgment delivered in the case of Godrej Sara Lee Ltd. (Supra) in paragraph 8 has observed as follows:

*“8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of U. P. v. Indian Hume Pipe Co. Ltd.)** and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of ; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this court found the issue raised by the appellant to be pristinely legal requiring determination by the High Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decision is that where the controversy is a purely legal one and it does not*

**(2021) 93 GSTR 1 (SC)*

*** (1977) 39 STC 355 (SC).*

involve dispute question of fact but only questions of law then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

15. From the nature of challenge presented by the petitioner in the present writ petition it does not appear that there is any scope to embark on any enquiry on any disputed question of fact or to consider any evidence. The controversy at hand is a purely legal one. The question as

to whether the satisfaction of the Assessing Officer is necessary as regards contravention of Section 269SS of the said Act, for initiating a penalty proceeding noted above would not require any detailed enquiry since there is no dispute at least on the basis of materials on record that there is no satisfaction recorded in the assessment order with regard to the violation of the provisions of section 269SS of the said Act. Thus, by overruling the objection as to maintainability of the writ petition, I proceed to decide on the primary question of law raised in the writ petition.

16. I find that Mr. Mookherjee by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Jai Laxmi Rice Mills*** (*supra*) has submitted that without the satisfaction of the Assessing Officer being recorded regarding the contravention of Section 269SS of the said Act, no penalty proceeding can be initiated. In this context it would be relevant to extract the observation made by the Hon'ble Supreme Court in paragraphs 2 to 5 of the above judgment.

“2. The assessee carried out this order in appeal. The Commissioner of Income Tax (Appeals) allowed the appeal and set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity of the assessee.

3. After remand, the Assessing Officer passed fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings under Section 271E of the Act was recorded. It so happened that

on the basis of the original assessment order dated 26.02.1996, show cause notice was given to the assessee and it resulted in passing the penalty order dated 23.09.1996. Thus, this penalty order was passed before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in the backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of original assessment order and when that assessment order had been set aside, could still survive.

4. The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under section 271E would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.

5. As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed.”

17. I find that the aforesaid issue has also been considered by the Hon’ble High Court of Andhra Pradesh in the case of **Grandhi Sri Venkata Amarendra** (*supra*) wherein the Hon’ble High Court of Andhra Pradesh has in paragraphs 8 and 9 pleased to observe as follows:-

“8. We have gone through the material placed on record. The Assessing Officer, except to base his addition on the letter of the assessee dated 02-06-2014, did not record any finding that there has been any violation of the provisions of Sec.269SS of the Act by the assessee, nor was any satisfaction recorded to the effect that the alleged transaction of acceptance of loan would attract penal consequences. In the absence of any finding to the said effect, in our considered view, the penalty cannot be levied. A presumption can be drawn, in the absence of a finding by the Assessing Officer to the effect that the petitioner has violated the provisions of Sec.269SS of the Act, that the department has accepted the explanation furnished by the petitioner denying allegation of loan in cash. Therefore, it can unhesistently be said that, having satisfied with the explanation of the assessee, the Assessing Officer did not record any satisfaction in the assessment order to the effect that the provisions of Section 269SS of the Act, are violated and did not contemplate levy of penalty under Sec.271D of the Act.

9. In our view, the satisfaction of the Assessing Officer is required to be recorded because the officer, who passed the assessment order would not be levying the penalty under Sec.271D of the Act, unless it is record in the assessment order, he cannot refer the file to superior officer i.e. Joint Commissioner, for initiating levy of penalty. Unless the Assessing Officer, who is the primary authority, based on the material before it, during assessment proceedings, arrives at a finding that there has been a violation of the provisions, like in the present case, of Section 269SS, there will not be any occasion to the Joint Commissioner, who is not the

Assessing Officer, to exercise his jurisdiction to levy Penalty under Section 271D. Following the decision of the Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills referred supra, we set aside the order passed under Sec.271D of the Act."

18. Having regard thereto, and in absence of the assessment order recording the satisfaction of contravention of provisions of Section 269SS of the said Act, consequential penalty proceeding is a nonstarter and could not have been proceeded with. However, since the respondents insist on filing opposition, to bring on record additional materials, the respondents shall be at liberty to use affidavit-in-opposition to the aforesaid writ petition so as to disclose any additional material regarding satisfaction of the assessing officer within a period of two weeks after the summer vacation. Reply thereto, if any, be filed on or before the matter is taken up next. Pending hearing of this petition, there shall be stay of the order impugned in the above writ petition till the end of August, 2025 or until further order whichever is earlier. List this writ petition in the monthly list of July, 2025.

(RAJA BASU CHOWDHURY, J.)