

आयकर अपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH, CHENNAI

श्रीचंद्रपूजारी, लेखा सदस्य एवंश्रीधुव्वुरुआर.एलरेड्डी,न्यायिकसदस्यकेसमक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 95/Mds/2017

निर्धारण वर्ष /Assessment year : 2009-2010.

The Income Tax Officer,
Ward 1,
Virudhunagar,

Vs. Shri. S. Arun Kumar,
243, Madasamy Koil Street,
Rajapalayam 626 117.

[PAN AMEPA 5855B]

(Appellant)

(Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. K. Ravi, IRS, JCIT.

प्रत्यर्थीकीओरसे/Respondent by : Ms. S. Vidya, CA.

सुनवाईकीतारीख/Date of Hearing : 06.06.2017

घोषणाकीतारीख/Date of Pronouncement : 19.06.2017

आदेश /O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue is directed against the order dated 27.10.2016 passed by the Id. CIT(A)-3, Madurai, for the assessment year 2009-10. Grievance of the Revenue in this appeal is with regard to deletion of penalty levied u/s. 271D of the Income Tax Act, 1961 (in short 'the Act').

2. Facts of the case are that assessee is an individual had filed his return of income for the impugned assessment on 03.12.2009 declaring an income of ₹1,46,840/-. The return of income was originally processed u/s. 143(3) of the Act on 25.08.2010. Latter assessment was completed u/s. 143(3) of the Act vide order dated 26.12.2010 determining income of the assessee at ₹3,65,950/-. It was observed by the Id. Assessing Officer that assessee had borrowed money from the following parties.

		₹
1	S.V. Venkateshwara Raja, Rajapalayam.	10,00,000
2	P.V. Durairaja, Rajapalayam	7,00,000
3	M.A. Perumalraja, Rajapalayam	10,00,000
4	PK Subramaniraja, Rajapalayam	10,00,000
5	SK Murugesaraja, Rajapalayam	10,00,000
	Total	47,00,000

Latter Id. Assessing Officer initiated penalty proceedings u/s. 271D of the Act by issuing a notice dated 06.01.2016 vide Misc/JCIT/VNR/2015-16, asking the assessee to appear before him on 27.01.2016 at 11.30 AM. In the penalty proceedings, Id. Assessing Officer observed that out of the above ₹47,00,000/-, It was noticed that except Shri. SK Murugesaraja all other have bank account and there was no reasonable cause for accepting loan from other four persons namely S.V. Venkateshwara Raja, Shri. P. V. Durairaja, M.A. Perumalraja and PK Subramaniraja totaling ₹37,00,000/- in cash in violation of Sec. 269SS of the Act.

Accordingly, he levied penalty u/s. 271D of the Act to the tune of ₹37,00,000/-.

3. Aggrieved, the assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals). Before Id. Commissioner of Income Tax (Appeals) Id. Authorised Representative pleaded that the Assessing Officer while completing the assessment u/s 143(3) of the Act on 26.12.2011 examined the genuineness of credits and accepted the same after giving a finding that the creditors were agriculturists having substantial land for cultivation and they cultivated mostly cash crops. He contended that as there was no case for initiation of penalty u/s 271D, neither he initiated the penalty nor did he inform the JCIT for initiation of penalty. This means that the Assessing Officer was satisfied that there was reasonable cause for accepting the loans in cash. However, after a lapse of four years from the date of passing the assessment order, the JCIT initiated penalty proceedings which got time barred because it should have been initiated within the reasonable time from the completion of assessment proceedings. For this purpose Id. AR relied on the decision of the Pune Bench of the Tribunal in the case of M/s. P.R. Associates in ITA No.1378/PN/2009 for assessment year 1999-2000 dated 14.11.2011. He submitted that in the above case, the Tribunal held that the initiation of penalty proceedings u/s.271D should have

been within the reasonable time even though there is no specific time limit laid down in the Act for initiation of penalty proceedings. He submitted that the Hon'ble Apex Court in the case of *UOI vs Citadal Fine Pharmaceuticals and others reported in [1989] 3 SCC 483 [2002-TIOL-680-SC-CX]* held that in the absence of any period of limitation, it is settled that every authority is to exercise the power within a reasonable period and what would be the reasonable period would depend upon the facts of the each case. In view of the above, the Id. AR vehemently urged that the impugned order is to be cancelled as the initiation was after a long period of four years from the completion of the assessment proceedings. Without prejudice to the above, Id. AR submitted that as per letter dt.28.11.2011 filed before the Assessing Officer during the course of assessment proceedings, the loans were availed for the purpose of entering into a new venture of quarry in Hosur for purchasing the same and as the assessee required funds urgently but somehow the deal could not be finalised and the assessee returned the money to the borrowers. He submitted that it was also pointed out in the above letter that due to the business urgency and the time factor involved, the loan was obtained in cash and returned back since the quarry was not purchased as the assessee was not satisfied with the new venture. He further submitted that since there was reasonable cause, the Assessing Officer himself did not initiate penalty proceedings and did not even

recommend initiation of penalty to JCIT but subsequently based on audit objection or otherwise, the JCIT initiated penalty proceedings which is not correct. He further submitted that even though four creditors were having bank accounts, they as agriculturists used to have cash in hand by cultivating cash crops as per the finding given by the Assessing Officer in the assessment order. Ld. Commissioner of Income Tax (Appeals) observed that the Assessing Officer completed the assessment u/s 143(3) on 26.12.2011 in which he gave a finding that the loans received by the assessee in cash were genuine and did not make any addition. He did not inform the JCIT for initiation of the penalty proceedings u/s. 271D. After a lapse of more than four years from the completion of assessment, the JCIT issued show cause notices on 06.01.2016 u/s. 271D. In the assessment order the Assessing Officer has given the finding that the creditors were agriculturists having substantial land holdings and deriving adequate agricultural income from cash crops. In the light of the above facts, the first question to be decided is whether the initiation of penalty proceedings u/s. 271D is time barred or not. It is true that the Act does not lay down any time limit for initiation of penalty proceedings u/s 271D. But that does not mean that the JCIT can initiate penalty proceedings after a long gap from the completion of the assessment proceedings. As held by the Hon'ble Supreme Court in the case of M/s Citadal Fine Pharmaceuticals (supra) in the absence of any

period of limitation laid down in the Act, every authority has to exercise the power within a reasonable period. The real question is whether the delay of four years can be said to be a reasonable period or not. Ld. Commissioner of Income Tax (Appeals) found that a period of four years after completion of assessment cannot be treated as a reasonable period and the JCIT should have initiated the penalty proceedings within few months from the completion of the assessment proceedings. In fact, the Assessing Officer should have informed the JCIT while completing the assessment u/s. 143(3) to initiate penalty proceedings. The fact that the Assessing Officer did not inform the JCIT shows that he was satisfied with the explanation of the assessee and decided not to write to JCIT about the initiation of the penalty proceedings because all the creditors were agriculturists. In the circumstances, Ld. Commissioner of Income Tax (Appeals) held that the initiation of the penalty proceedings by notice dt.06.0.1.2016 is time barred and the impugned order is cancelled. Without prejudice to the above, it is further seen that the assessee was contemplating to purchase a quarry near Hosur and mobilized funds from relatives who were agriculturists and deposited about ₹47,00,000/- in his bank account. The claim of the assessee was that the amount was to be paid immediately whenever the deal was finalised and for this purpose the amount was kept ready in the bank account, but the deal could not be finalised because it was not viable and

the amount was returned to the relatives. As held by the Hon'ble Hyderabad Tribunal in the case of *Dillu Cine Enterprises P Ltd [80 ITD 484]* when there was an urgent exigency for taking loan in cash that would constitute the reasonable cause and the penalty u/s 271D cannot be levied. Even though the creditors were having the bank accounts, they were deriving substantial income from cash crops and they were having cash in hand from which the amount was advanced to the assessee . In the circumstances, Id.Commissioner of Income Tax (Appeals) accepted the plea of the assessee that the loan was obtained due to the business exigencies that would constitute a reasonable cause and held that there is no justification for levy of penalty and accordingly, he deleted the penalty. Against this, the Revenue is in appeal before us.

4. Ld. Departmental Representative submitted that assessee failed to establish the existence of reasonable cause in accepting the cash loan from four persons as mentioned in the section 273B of I.T. Act 1961 and also failed to establish the business exigency during the course of penalty proceedings before the Joint Commissioner of Income-tax.

4.1 Ld. Departmental Representative had placed reliance on the Judgements of Hon'ble Chennai High Court in the case of *Nandhi Dhall Mills reported in (2015) 61 Taxmann.com 97(Madras)* and of Hon'ble Kerala High Court in the case of *Grihalakshmi Vision reported in (2015)*

63 taxman.com 196(Kerala), wherein it is held that in the absence of business exigency to avail cash loan, such transaction would not come under exception clause of section 271D.

4.2 Ld. Departmental Representative submitted that assessee has taken loan otherwise than by an account payee cheque/draft from four persons though such persons have bank accounts.

4.3 The Id. Departmental Representative submitted there is no limitation for initiation of penalty proceedings under section 271D is prescribed under the Income-tax Act 1961.

4.4 The Id. Departmental Representative had also placed reliance on the decision of Hon'ble IT AT, Chandigarh in the case of *Dewan Chand Amrit Lal Vs DCIT dated 03.11.2015(98 ITD 200)* wherein it was held that the legislature has consciously not prescribed any limitation for initiation of penalty proceedings under sections 271D and 271E and there was neither any necessity nor the tribunal is empowered to prescribe any limitation for initiation of penalty proceedings under sections 271D and 271 E in interpreting the provisions.

4.5 The Id. Departmental Representative submitted CIT(A) ought to have considered the fact that when no limitation had been incorporated into the statute for initiation of penalty under section 271D, it cannot be

held that initiation of penalty proceedings by the Joint Commissioner is barred.

4.6. The Id. Departmental Representative further submitted that CIT(A) ought to have considered the fact that the assessee had income from commission, business and other sources and hence the cash loan taken by the assessee is not exempted as per proviso to section 269SS of the IT Act 1961 and prayed for allowing the appeal.

5. Per contra, Id. Authorised Representative submitted that due to business exigency assessee borrowed loans from above four parties in cash and there exist reasonable cause for borrowing the money in cash. She also submitted that in view of provisions of Sec. 275(1)(c) of the Act, the penalty order to be passed within the end of the financial year if the proceedings of penalty is initiated in the course of "some" proceeding or within the period of six months from the end of the month in which action for imposition of penalty is initiated. According to her, penalty notice was issued on 15.01.2015, the penalty order passed by the Id. Assessing Officer on 08.02.2016 is bad in law. For this purpose, she relied on CBDT Circular No.10/2016, F.No.279/Misc./M-140/2015-ITJ, dated 26th April, 2016 and also judgment of Hon'ble Delhi High Court in the case of *Subodh Kumar Bhargava vs. CIT 309 ITR 0031*.

6. We have heard both the parties and perused the material on record. In this case, penalty notice was issued to the assessee on 06.01.2016 and not on 06.01.2015 as alleged by the Id. Authorised Representative as seen from the assessment order as well as order of the Id. Commissioner of Income Tax (Appeals). In our opinion mentioning the date in notice at the top of it as 06.01.2015 is only a typographical error as it is evident that Id. Assessing Officer asked assessee to appear before him on 27.01.2016. Even reference no also mentioned as Misc/JCIT/VNR/2015-16. Accordingly, when it was pointed out to the Id. Authorised Representative she fairly conceded the error and agreed with the contention of the Id. Assessing Officer that it was issued on 06.01.2016. Hence, the reliance placed by the assessee in the case of *Subodh Kumar Bhargava (supra)* and *CBDT Circular No.10/2016* is not applicable to the facts of the case. In our opinion the penalty order passed u/s. 271D of the Act is not barred by limitation in terms of Sec. 275(1) (c) of the Act.

7. Next contention of the Id. Authorised Representative is that cash loans are genuine loans and it was borrowed on account of business exigency and penalty u/s. 271D cannot be levied. In our opinion, firstly assessee has not demonstrated business urgency to borrow money from above four parties by cash. There is iota of evidence placed before lower authorities to show that assessee is very urgent need of cash to

meet business commitment. Had it had business exigency to borrow money by cash, it is mandatory on the part of the assessee to place necessary evidence. Without examining any evidence, it is not possible for us to hold there is business exigency to borrow the money from the above persons in cash. Being so, we are not in agreement with the finding of the Id. Commissioner of Income Tax (Appeals) in this regard.

8. Nextly, with regard to the genuineness of the transactions, we cannot say that genuineness of transactions, out of the purview of the Sec. 271D of the Act. If the transactions are not genuine, Id. Assessing Officer could have applied the provisions of Sec. 68 of the Act. Being so, there is no force in the argument of the Id. Authorised Representative. It is also brought on record that all the transactions from whom the money were borrowed were having bank account. The assessee had not passed the test of reasonable cause showing his bonafide as per provisions of Sec. 273(b) of the Act do not get attracted, more so, in the case no proper explanations offered by the assessee before lower authorities. In our opinion, assessee is liable for penalty u/s. 271D of the Act. We place reliance on the judgment of Jurisdictional High Court in the case of *P. Muthukarupan vs. JCIT 375 ITR 243*. In our opinion, it is sufficient to say that simply the transaction was genuine, so sec. 269SS of the Act is not applicable. One cannot accept such proposition of law, there is no ambiguity in the language of said provisions of Sec. 271D of the Act. As

such there is no such need to apply the purposive theory , in interpretation of said section. Since the assessee not show any mitigating circumstances, penalty could be levied. There is no urgency for assessee to borrow money in cash in violation of Sec. 269SS of the Act. We place reliance on the judgment of *Nandhi Dhall Mills vs. CIT 373 ITR 510*. Accordingly, we reverse the order of the Id. Commissioner of Income Tax (Appeals) and restore the order of Id. Assessing Officer. The ground of appeal raised by Revenue is allowed.

9. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on Monday, the 19th day of June, 2017, at Chennai.

Sd/-
(धुव्वुरुआर.एलरेड्डी)
Duvvuru R.L. Reddy)
न्यायिक सदस्य/Judicial Member

Sd/-
(चंद्रपूजारी)
(Chandra Poojari)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th June, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील) /CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.