

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.2988 & 2989/Ahd/2014
(निर्धारण वर्ष / Assessment Year :2010-11)

The Income Tax Officer, Ward – 2, Nadiad.	बनाम/ Vs.	Shri Aviniskumar Gunvantray Joshi, C/o. D.P. Medical & General Stores, Nr: D.P. High School, Santram Road, Nadiad – 387 001
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Cross Objection Nos. 311 & 312/Ahd/2014
(Assessment Years : 2010-11)

Shri Aviniskumar Gunvantray Joshi, C/o. D.P. Medical & General Stores, Nr: D.P. High School, Santram Road, Nadiad – 387 001	बनाम/ Vs.	The Income Tax Officer, Ward – 2, Nadiad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABQPJ 7574 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by :	Shri Mudit Nagpal, Sr. D.R.
Assessee by :	Shri K. C. Thaker, A.R.

सुनवाई की तारीख / Date of Hearing	18/12/2017
घोषणा की तारीख/ Date of Pronouncement	19/12/2017

आदेश / O R D E R

PER MAHAVIR PRASAD, JUDICIAL MEMBER :

These are two appeals by the revenue alongwith two Cross Objections by the assessee against the order of the Commissioner of Income Tax(Appeals)-II, Baroda, dated 11/12/2013 for the Assessment Years (AY) 2010-11.

2. First we take up ITA No.2988/Ahd/2017 for A.Y. 2010-11. Following Grounds has taken by the department in this appeal.

“On the facts and in the circumstances of the case and in law the Ld. C.I.T.(A) has erred in deleting the penalty levied u/s.271D of the Act, without appreciating the fact that the assessee neither produced confirmation letter in support of the contention that his father gave him Rs.9,60,000/- to enable him to settle in life without any precondition of repayment, nor did the assessee produce any evidence to explain that amount of Rs.9,60,000/- given by his father was not a loan/deposit.”

3. CBDT Circular No.21 of 2015 dated 10.12.2015. The ld. Departmental At the outset, the ld. Counsel for the assessee submitted that the appeal of the Revenue needs to be dismissed on account of low tax effect in view of the Representative fairly admitted that the tax effect is less than the limit prescribed by the aforesaid CBDT Circular.

4. We have heard both the parties and perused the material available on record. We find that *prima-facie* this appeal of the Revenue is not maintainable in view of CBDT Circular No. 21/2015 in F.No.279/Misc. 142/2007-ITJ (Pt) dated 10th December 2015, vide which it has been provided that if the tax effect by virtue of the Commissioner of Income-tax (Appeals)'s order is below Rs. 10 lacs, then that order would not be challenged before the Tribunal in further appeal. The Board has provided exemptions at clause (8) of the Instructions wherein it has been provided that these instructions will not be applicable, if vires of any provisions has been quashed by impugned order or addition was made on some audit objections or the addition relates to undisclosed foreign assets/bank accounts, etc. We find that the present case does not fall within the exemption clause and the tax is less than Rs.10 lacs. Therefore, the present appeal is not maintainable and hence dismissed *in limine*.

5. Now we take ITA No.2989/Ahd/2014 for A.Y.2010-11 following Grounds have taken by the revenue:

1. *On the facts and circumstances of the case and in law the ld. C.I.T.(A)-IV, Baroda, has erred in deleting the penalty levied u/s. 271E of the I.T. Act without appreciating the fact that assessee during the course of penalty proceedings himself admitted to have repaid short term loan to his father aggregating Rs.12,90,000/-.*
2. *On the facts and circumstances of the case and in law the Ld. C.I.T, (A)-IV, Baroda erred on relying on the affidavit filed by the assessee's wife during the course of appellate proceedings while deleting the penalty.*

6. The brief facts of the case are that during the course of assessment proceeding in the case of assessee for the assessment year 2010-11, found that the assessee has repaid loan in cash aggregating to Rs.17,40,000/- from Pratixaben A. Joshi and Gunvantrai M. Joshi as follows:

<i>"Date</i>	<i>Amount</i>	<i>Name</i>
20/02/2010	Rs.4,50,000/-	Pratixaben A. Joshi
25/01/2010	Rs.9,50,000/-	Gunvantrai M. Joshi
14/02/2010	<u>Rs.3,40,000/-</u>	Gunvantrai M. Joshi
Total	<u>Rs.17,40,000/-</u>	

2. *The Assessing Officer observed that as the repaid loans in cash in aggregate as mentioned above exceeded Rs.20,000/-, the assessee contravened the provisions of consequences as envisaged under the provisions of section 271E of the Act. Accordingly, the AO referred the case for initiation of penalty u/s.271E of the Act.*

3. *As the penalty is leviable u/s.271E of the Act, a show-cause notice u/s.271E of the Act was issued to the assessee by the undersigned vide letter No. Joint CIT/KR/Show Cause/271E/AGJ/2012-13 dtd.25.02.2013 asking the assessee to submit his explanation in this regard either personally or through authorized representative on or before 05.03.2013.*

4. *In response the above notice the AR of the assessee attended on the date of hearing i.e. on 05.03.2013 and filed the written submission in this regard which is reproduce hereunder:*

"Relevant to the above matter the assessee has – received show cause notice from your honour concerning to imposition of penalty under section 271E for the alleged breach of section 269T of the Act (hereinafter called – 'Act' for the sake of Brevity). The assessee raises following disputes against the proceedings:

1. That the conclusion of the assessment has been made on 12/02/2013 according to which the undersigned has been 'assessed u/s.143(3) r.w.s. 147 of the I.T. Act, 1961; Tax and interest u/s.234A, 234B & 234C is charged. Penalty notice u/s.271(1)(c) of the I.T. At, 1961 has been issued. Demand notice and challan issued accordingly'. Vide please last three lines of para 6.1 of the order – u/s.143(3) dtd.12/02/2013. Initiation of penalty has not been proposed on conclusion of assessment.

2. What the undersigned has been done was the repayment of the money to the Bigger Joint Family of which I am a coparcener/member and administered by Shri Gunvantrai M. Joshi, father who is Karta of the family. The aggregate amount of Rs.12,90,000/- was short loan repaid to father as under:

Amounts were not returnable after a notice or period fixed
Cash Rs.9,50,000/- on 25.01.2010 &
Cash Rs.3,40,000/- on 14.02.2010

As such the repayment of loan was not Deposits and as such the same cannot be hit by the provisions of section 269T. Accordingly there was no case to invoke the provisions of section 271E.

3. So also the payment of Rs.4,50,000/- made to Pratixaben A. Joshi (wife) was also out of capital of the H.U.F. which has been kept by the Bigger Joint family of Gunvantrai Joshi (Father). These were not the deposits but the payment made by the Joint family in the form of 'Married Woman Property' due to her earlier, and which was a liability of the family pending from Marriage.

Considering the above facts & circumstances penalty proceedings may be dropped & oblige. "

5. The contention of the assessee cannot be accepted in view of clear cut provisions u/s.269T of the Act that the payment of cash above Rs.20,000/- is permissible only in certain circumstances/by certain institutions which are listed in the proviso to the section and which are notified by the Central Government and in no other case this has been permitted. Therefore, the

assessee's contention that unavoidable circumstances do not attract penalty u/s.271E cannot be accepted.

6. On the basis of the above discussion, it is concluded that the assessee has repaid cash deposits exceeding Rs.20,000/- in violation of provisions of section 269T of the Act. Accordingly, this is a fit case for levy of penalty u/s271E of the Act. The total payment made in cash as per the Assessing Officer's report for the A.Y. 2010-11 is Rs.17,40,000/-, Accordingly, a penalty of Rs.17,40,000/- is levied u/s.271E of the I.T. Act, 1961 for the A.Y.2010-2011.”

7. Against the said order assessee filed an appeal before the first appellate authority and Id. CIT(A) allowed the appeal of the assessee.

8. Now appeal is before us.

9. We have gone through the relevant record and impugned order. In this case, Assessing Officer observed that said repaid loan in cash in aggregating was exceeding Rs.20,000/-, the assessee contravened the provisions of Section 269T of the I.T. Act, 1961 and thereby the assessee was liable penal consequences as envisaged under the provisions of Section 271E of the Act.

10. In this case, father of the assessee, Shri G. M. Joshi has deposited Rs.9,60,000/- in bank account no.10424307437. These are the deposits by self which the Jt. CIT has considered as a repayment of a loan by the appellant. There is nothing on record to show that the money is a

repayment of loan. The Assessing Officer was fully empowered to examine the source of the cash deposits of Rs.9,60,000/- in the account of the father Mr. Gunvantray M. Joshi but the same will be outside the purview of the penalty for the violation of section 269T of the Act, there is an entry of Rs.4,50,000/- deposited by the appellant in the AXIS Bank account which is jointly held with Smt. Pratixaben Joshi, the wife of the appellant. It is not clear as to how and from where the Jt. CIT has picked-up the date of 20/02/2010 on which the reported repayment of loan in violation of section 269T of the Act has taken place. The lady Smt. Pratixaben A. Joshi who is the wife of the appellant has filed an affidavit that the money in question was received by her from her father-in-law and the same was given to the appellant/husband for the on-going construction of the house. Though an affidavit which was filed by the Pratixaben A. Joshi is not on record but statement of Id. AR has been noted that this fact is correct. Clearly, the transaction between a wife and a husband who was staying together under the same roof is eligible for relaxation from the purview of repayment of loan etc. as provided in section 273B of the Act. Ld. Jt. CIT has not given any source of loan from where this so called loan was taken. Therefore, in our considered opinion this is not a fit case, where penalty should be levied. In the result, appeal filed by the department is dismissed.

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11. So far as Cross Objection Nos.311 & 312/Ahd/2014 for A.Y. 2010-11 are concerned. Same are dismissed as not pressed.

12. In the result, ITA Nos.2988 & 2989/Ahd/2014 for A.Y.2010-11 are dismissed and Cross Objection Nos. 311 & 312/Ahd/2014 for A.Y. 2010-11 are also dismissed as not pressed.

This Order pronounced in Open Court on 19/12/2017

Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 19/12/2017
Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-IV, Baroda.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad