

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री बी आर बासकरन, लेखा सदस्य एवं  
श्री धुवुरु आर. एल. रेड्डी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER &  
SHRI DUVURU R.L. REDDY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.54/Vizag/2016

(निर्धारण वर्ष / Assessment Year:2006-07)

M/s Sri Parameswari Projects Pvt. Ltd.  
Regidi Village, Srikakulam  
[PAN :AAIC5336E]

Vs. Addl.Commissioner of  
Income Tax,  
Range-4, Visakhapatnam

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri Y.A.Rao, AR

प्रत्यार्थी की ओर से / Respondent by

: Shri R.S.Aravindakshan,DR

सुनवाई की तारीख / Date of Hearing

: 21.03.2018

घोषणा की तारीख / Date of Pronouncement

: 22.03.2018

**आदेश / ORDER**

**PER Shri B.R. BASKARAN, Accountant Member:**

The assessee has filed this appeal challenging the order dated 19.11.2015 passed by the Ld.Commissioner of Income-Tax (Appeals) [CIT(A)]-2, Visakhapatnam confirming the penalty of

Rs.6,45,000/- levied by the Addl. Commissioner of Income Tax u/s 271D of the Act for violation of provisions of section 269SS of the I.T.Act.

2. The assessee is challenging the validity of penalty order passed by the Addl. Commissioner and also contesting the levy of penalty of Rs.6,45,000/- imposed by him.

3. The facts relating to the issue are discussed in brief. The assessee is having a petrol bunk, cinema hall and also dealing in automobiles. The assessment order for the assessment year 2006-07 was completed by the Assessing Officer (AO) on 31.12.2008. During the course of assessment proceedings, the AO noticed that the assessee had received share application money to the tune of Rs.97.17 lakhs. The AO made enquiries with regard to the share applicants and finally made an addition of Rs.8,80,000/- u/s 69 of the Act. During the course of enquiry, the AO also examined certain persons who have applied for shares in the assessee company. The aggregate amount given by those persons was Rs.6,45,000/-. Though the AO accepted the credit worthiness of those share applicants, since the amount has been

received from them by way of cash, the AO observed in the assessment order that the penalty proceedings u/s 271D r.w.s. 269SS of the Act are being initiated separately.

4. Subsequently, Addl. Commissioner of Income Tax issued notice u/s 274 r.w.s.271 of the Act on 25.06.2009. The assessee submitted before the Addl.Commissioner of Income Tax that the share applicants mentioned below are agriculturists and they do not have bank accounts, since they do not have bank in their villages. The Addl. Commissioner of Income Tax was not convinced with the explanations of the assessee and accordingly levied penalty of Rs.6,45,000/- u/s 271D of the Act for violation of the provisions of section 269SS.

S.No.	Name of the Person	Date	Amount
1.	Mahanti Satyam Naidu	1.6.2005	1,00,000
2.	Kandi Chandra Shekar Rao	1.6.2005	1,00,000
3.	Mahanti Bhaskara Rao	1.7.2005	50,000
4.	Mahanti Sanakara Rao	1.7.2005	50,000
5.	Pativada Gopala Rao	26.11.2005	50,000
6.	Kandi Janardhana Rao	28.11.1005	60,000
7.	Mahanti Chandra Babu	28.11.1005	50,000
8.	M.Ramana	23.11.2005	50,000
9.	Mahanti Venkatappala Naidu	24.11.1005	75,000
10.	Vempatapu Tati Naidu	23.12.2005	60,000
	Total		6,45,000

The appeal filed before the Ld.CIT(A) challenging the penalty order was dismissed by the Ld.CIT(A). Hence the assessee has filed appeal before us.

5. The assessee has raised a legal issue contesting the validity of the penalty order on the grounds of limitation. The Ld.AR submitted that the proceedings u/s 271D of the Act was initiated separately by the Addl. Commissioner of Income Tax on 25.06.2009 as per the provisions of section 275(1)(c) of the Act. He submitted that the order imposing penalty should have been passed within six months from the end of the month in which the action for imposition of penalty was initiated. Accordingly, the time limit for passing the order u/s 271D of the Act was available upto 31.12.2009. Since the impugned penalty order was passed on 30.03.2010, the Ld.AR contended that the same is barred by limitation.

6. The Ld.DR on the contrary, supported the orders passed by the tax authorities.

7. Having heard the rival submissions, we are of the view that there is merit in the contentions of the assessee. We have noticed earlier that the AO has stated in the assessment order that the penalty proceedings u/s 271D of the Act are being initiated separately. The assessing officer, in the present case, is Assistant Commissioner of Income-tax. As per sec. 271D(2) of the Act, the penalty u/s 271D(1) shall be imposed by the Joint Commissioner, meaning thereby, the Assessing officer, being an assistant commissioner, does not have the power to impose penalty u/s 271D of the Act. In any case, there is no material on record to show that the assessing officer issued any notice u/s 271D of the Act to the assessee.

8. At the instance of the AO, the Addl. Commissioner of Income Tax has initiated the penalty proceedings separately by issuing notice to the assessee u/s 274 of the Act on 25.06.2009. In that case, as per the provisions of section 275(1)(c) of the Act, the penalty order should have been passed within six months from the end of the month in which the action for imposition of penalty is initiated, meaning, thereby the penalty order should have been passed by the Addl. Commissioner of Income

Tax on or before 31.12.2009. Since the impugned order has been passed on 30.03.2010, the same is barred by limitation and hence liable to be quashed.

9. We have earlier observed that there is no material on record to show that the assessing officer has issued any notice u/s 271D of the Act. Even if it is assumed that the assessing officer has issued a notice u/s 271D on the date of assessment order, i.e., on 31-12-2008, the same would become time barred by 30-06-2009, i.e., within six months from the end of the month in which action for imposition of penalty is initiated, for the reason that the penalty proceedings u/s 271D of the Act cannot be considered to be an action initiated during the course of assessment proceedings. For this proposition, we rely upon the decision rendered by Hon'ble Rajasthan High Court in the case of CIT Vs. Hissaria Bros (291 ITR 244), which has been referred by the very same High Court in the case of CIT Vs. Jitendra Singh Rathore (I.T Appeal No.90 of 2007 dated 10-01-2014) as under:-

7. After having given thoughtful consideration to the submissions made on behalf of the appellant and having examined the record, we are clearly of the view that this appeal remains meritless and the formulated question

deserves to be answered against the appellant particularly for the view already taken by this Court in the case of *CIT v. Hissaria Bros.* [2007] 291 ITR 244 , wherein, this Court has specifically held as under:-

“38. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under Sections 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under Sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, Clause (a) of Sub-section (1) of Section 275 cannot be attracted to such proceedings. If that were not so Clause (c) of Section 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if Clause (a) was to be invoked, no necessity of Clause (c) would arise.”

10. In view of the foregoing discussions, we hold that the penalty order passed by Addl. Commissioner of Income tax on 30-03-2010 is barred by limitation. Accordingly, we set aside the order passed by the Ld.CIT(A) and quash the penalty order passed by the Addl.Commissioner of Income Tax.

11. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 22<sup>nd</sup> Mar'18.

Sd/- (डी.आर.एल. रेड्डी) <b>(DUVVURU R.L. REDDY)</b> (	Sd/- (बी.आर. बासकरन) <b>B.R. BASKARAN)</b>
<b>न्यायिक सदस्य/JUDICIAL MEMBER</b>	<b>लेखा सदस्य/ACCOUNTANT MEMBER</b>

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 22.03.2018

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – M/s Sri Parameswari Projects Pvt. Ltd., Regidi Village, Srikakulam
2. प्रत्यार्थी / The Respondent – Addl.Commissioner of Income Tax, Range-4, Visakhapatnam
3. आयकर आयुक्त / The CIT-2, Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-2, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, VISAKHAPATNAM