

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी" अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1925/Ahd/2016

निर्धारण वर्ष/A.Y. 2011-12

Shri Dilip Purshottambhai Patel, Prop. M/s. D P Patel Engineering & Contractor, 26, Kamudi Soc. Opp. S.T. Depot, Dabhoi, Vadodara PAN: : ADUPP 6030 A	Vs	Addl. Commissioner of Income-tax, Range-3, Baroda
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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By Assessee(s) :	Shri Sunil Talati, AR
By Revenue :	Shri Sumit Kumar Varma, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04/04/2018

घोषणा की तारीख/Date of Pronouncement : 23/04/2018

आदेश/O R D E R

PER S.S. GODARA, JUDICIAL MEMBER :-

This assessee's appeal for assessment year 2011-12 arises against CIT(A)-5, Vadodara's order dated 11.04.2016 passed in case No.CAB/5-313/2014-15 affirming Assessing Officer's action levying penalty of Rs.3,65,000/- in his order dated 24.07.2014 in proceeding u/s 271E of the Income-tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Learned counsel takes us through the CIT(A)'s detailed discussion in rejecting assessee's averments during the course of lower appellate proceedings as under:-

"6.3 I have considered the facts and circumstances of the case, the observations of the Assessing Officer, the submissions of the assessee, material available on record and the judicial pronouncements on the

subject. It is not disputed by the assessee that the amounts in question were treated as loans by the assessee in his books of accounts. From the records, it is also clear that the above transactions were in the nature of loans obtained by the assessee. It is also not in dispute that the amounts in question were returned by the assessee in cash and this fact has been accepted by the assessee in his written reply also. The assessee has disputed that the amounts in question were not loan and the provisions of section 269T and 271E were not applicable to the facts of the case.

6.4 As far as transaction of Rs.1,50,000/- with Shri Manoj Thakor is concerned, the assessee has submitted that he was awarded a contract by M/s SSNNL in F.Y. 2004-05 and one of the clauses of the contract required him to deposit a sum of Rs.3,00,000/- with M/s SSNNL. The assessee had subcontracted the work to M/s Gayatri Construction, who was asked by the assessee to deposit half of Rs.3,00,000/- with M/s SSNNL. Shri Manoj Thakor a/c M/s Gayatri Construction, deposited half of Rs.3,00,000/- i.e. Rs.1,50,000/- with M/s SSNNL, on behalf of the assessee. It is not disputed that the sum of Rs.1,50,000/- deposited by Shri Manoj Thakor was ultimately assessee's responsibility. There is nothing on record to show that Shri Manoj Thakor or M/s Gayatri Construction were ever obliged through any binding contract, to deposit any sum with M/s SSNNL. The money deposited by Shri Manoj Thakor with M/s SSNNL was, in the ultimate analysis, a loan advanced to the assessee, to enable him to meet 'his contractual liabilities with M/s SSNNL, by depositing the requisite sum with M/s SSNNL. Since the nature of the transaction was loan and since the same was returned in cash, the provisions of section 269T and 271E are very well attracted in this case and assessee's arguments to the contrary in this regard are rejected.

6.5 As regards repayment of Rs.25,000/- to Shri Bhimjibhai Sama, the assessee has argued that since the repayment was made in two instalments each of less than 20,000/-, the provisions of section 269T/271E are not attracted. This proposition is again, contrary to the provisions. As per section 269T, if the aggregate amount of loan together with interest, on the date of repayment, is more than Rs.20,000/-, the repayment must be made as per provisions of section 269T, which prohibits cash payments. Payment in cash instalments of less than Rs.20,000/- each does not absolve the assessee from the penal provisions of section 271E for violation of section 269T of the Act.

6.6 The assessee has a/so paid cash of Rs.95,000/- each to Shri Kanubhai Patel and Shri Bhaveshbhai Patel. The assessee has explained that he had purchased a piece of land with the above two persons as co-owners and these two persons had given him Rs.95,000/- each to develop the land.

However, since the relevant permissions from the competent authorities could not be obtained, the amounts received from them were returned back in cash. However, there is no contemporary evidence on record to substantiate the claim that it was not loan. The assessee has furnished a copy of confirmations from both of these persons, but the same appears to be an afterthought, as the same has been obtained after the Assessing Officer detected the violation, as is evident from date of confirmation viz. 28.11.2013 in the case of Shri Kanubhai J. Patel. The language of both the confirmations is same. It is obvious that the assessee had treated the sums in question as loans in his books of accounts, therefore, repayment of the same in cash is a violation of the provisions of section 269T of the Act and the assessee is liable to suffer the consequences of the provisions of section 271E of the Act."

3. Learned authorized representative thereafter submits very fairly that the assessee does not press for his challenge made to correctness of the impugned penalty relevant to cash payment of Rs.95,000/- in case of Shri Kanubhai Patel. He then reiterates assessee's pleadings that both the lower authorities have erred in law as well as on facts in confirming in levying the impugned penalty. The Departmental Representative on the other hand supports the above extracted finding of the learned CIT(A) confirming the penalty.

4. We notice in this backdrop of the case that the hon'ble apex court in the case of Asst Director of Inspection (Investigation). vs. Kum A B Shanthi, (2002) 255 ITR 258 (SC), explained the object of introducing section 269SS (on identical lines) to be that of eradication of evil practice of making false entries in account books followed by consequent explanation qua the same. The hon'ble jurisdictional high court's judgment in case of CIT vs. Bhagwati Prasad Bajoria (HUF), [2003] 263 ITR 487 (Guj.) also reiterates the same. We notice in this backdrop of the facts that the lower authorities do not dispute assessee's explanation qua genuineness of the impugned transactions. We however are of the opinion that the

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impugned penalty does not automatically flow in case of any contravention made to the statutory provision under section 269T of the Act. We therefore follow above stated legal position to accept assessee's contention challenging correctness of the impugned penalty in case of the remaining three cases as Assessing Officer as well as the CIT(A) have not doubted the genuineness of the impugned transactions. We accordingly direct the Assessing Officer to delete the impugned penalty. Assessee's corresponding grounds are therefore accepted. This assessee's appeal is partly allowed.

Order pronounced in the Court on 23rd April, 2018 at Ahmedabad

Sd/-

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

(S.S. GODARA)
JUDICIAL MEMBER

Ahmedabad; Dated 23/04/2018

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आदेश की प्रतिलिपि अग्रहित/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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

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