

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6777/Del./2014
Assessment Year 2005-2006

S.B. Packagings Pvt. Ltd., 3 rd Floor, Vardhman Plaza Corner, Inder Enclave, Paschim Vihar, New Delhi – 110087 PAN AABCS3731Q	vs.	The Addl. CIT, Range-7, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Anil Kumar Gupta, FCA
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	10.07.2018
Date of Pronouncement :	12.07.2018

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-X, Delhi, Dated 30.09.2014, for the A.Y. 2005-2006, challenging the levy of penalty under section 271E of the I.T. Act, 1961.

2. Briefly the facts of the case are that return of income declaring loss of Rs.(-)18.22 crore was filed on 30.10.2005. The

original assessment was completed under section 143(3) vide order dated 05.09.2009 after making certain adjustments at a loss of (-) 13.23 crores. The A.O. issued notice under section 148 on 30.03.2012 on the reason that assessee had made repayment of unsecured loan amounting to Rs.4 lakhs in cash on different dates but has not been shown by the assessee and its source is not explained. The assessee in response to notice under section 148 submitted that return already filed may be treated as return filed in response to notice under section 148 of the I.T. Act. The A.O. after recording submissions of the assessee completed the assessment at the same loss as determined earlier at Rs.13.23 crores. The A.O. however, noted in the assessment order that since assessee made repayment of loan amount of Rs.4 lakhs in cash, therefore, penalty under section 271E is attracted for non-compliance of the provisions of Section 269T of the I.T. Act. The record was forwarded to Addl. CIT for issuing notice under section 271E of the I.T. Act. The A.O. in the penalty order mentioned that penalty proceedings under section 271E of the Act were initiated and

notice under section 271E was sent to the assessee on 24.12.2012 for compliance on 31.12.2012. The A.O. was not satisfied with the explanation of assessee and levied the penalty under section 271E of the I.T. Act in a sum of Rs.4 lakhs vide order dated 24.05.2013.

3. The penalty order was challenged before the Ld. CIT(A). It was contended that assessee has made a refund of loan in cash to the extent of Rs.95,073/-, therefore, penalty can be imposed for repayment of loan to the said amount only. It was submitted that assessee had source of making the repayment. M/s. Gross Holdings Pvt. Ltd., is a sister concern of the assessee-company and in earlier year, the sister concern had advanced money to the assessee-company and the opening balance as on 01.04.2004 was Rs.95,073/-. Against this opening balance, assessee-company paid Rs.1 lakh each on four dates. These cash amounts were paid to sister concern in urgent need of fund. It was a genuine transaction and there were no intention to avoid or evade any tax. Copy of the ledger

account etc., were filed. It was submitted that the transaction between assessee-company and sister concern are not in nature of loan or deposit so as to attract the penalty. The assessee relied upon several decisions in support of the contention.

4. The Ld. CIT(A) accepted the explanation of assessee that repayment of loan was made for a sum of Rs.95,073/- only. The Ld. CIT(A) also noted that assessee has not come up with any reasonable cause for undertaking the transaction in cash. However, merely these transactions were genuinely adopted does not make the assessee's case for waiver of the penalty. The Ld. CIT(A), accordingly, restricted the penalty to the amount of Rs.95,073/- only and for remaining cash payment, A.O. was directed to consider to impose penalty under section 271D of the I.T. Act for balance payment of cash payment. The appeal of assessee was accordingly partly allowed.

5. I have heard the Learned Representatives of both the parties and perused the material on record.

6. Learned Counsel for the Assessee, at the outset, submitted that penalty order is time barred. In support of his contention, he has referred to provisions of section 275(1)(c) of the I.T. Act, which reads as under :

“275 (1) No order imposing a penalty under this Chapter shall be passed-

(a) -----

(b) -----

“(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”

6.1. In this case, the re-assessment proceedings were completed on 29.11.2012 and since no addition have been made to the return of income, therefore, according to the Learned Counsel for the Assessee, no further appeal have been filed

before the Ld. CIT(A). The A.O. in the penalty order has mentioned that notice under section 271E was sent to the assessee on 24.12.2012 for compliance on 31.12.2012. The penalty order is passed on 24.05.2013. According to Section 275(1)(c), when the assessment order was not subject to appeal i.e., in any other case, no order imposing penalty under this Chapter shall be passed after the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated or completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expire later.

6.2. In this case, assessment order was passed on 29.11.2012 initiating penalty proceedings under section 271E and the show cause notice for levy of the penalty was issued on 24.12.2012, therefore, it is a later period which is applicable to the case of the assessee. Since penalty order have been passed on 24.05.2013, therefore, it is passed within six months from the end of the month in which the action for imposition of

penalty is initiated i.e., from the date of initiating the penalty proceedings through sending a show cause notice to the assessee on 24.12.2012. Therefore, the penalty order is passed within the period of limitation. The contention of the Learned Counsel for the Assessee is accordingly rejected.

6.3. Learned Counsel for the Assessee further submitted that re-assessment proceedings could not be initiated for initiating the penalty proceedings under section 271E of the I.T. Act. The contention of the Learned Counsel for the Assessee is not acceptable because initiation of re-assessment proceedings is altogether different proceedings and ultimately re-assessment is passed at the returned income, which could not be further challenged by the assessee in any appeal. Therefore, the re-assessment proceedings have no co-relation with the levy of the penalty under section 271E of the I.T. Act. It may be noted that proceedings under section 271E could have been initiated separately for violation of Section 269T of the I.T. Act. It has no co-relation with passing of the assessment/re-assessment

order. These can be independently initiated against the assessee for violation of provisions of Section 269T of the I.T. Act. The contention of the Learned Counsel for the Assessee is accordingly rejected.

6.4. Learned Counsel for the Assessee further submitted that it was an *inter-se* genuine transaction between the assessee-company and the sister concern and that in case of urgent need the repayment of Rs.95,073/- have been made. The assessee relied upon several decisions before Ld. CIT(A) and also relied upon several decisions in the written synopsis as well. The Ld. CIT(A) instead of deciding the above submissions of the assessee has summarily rejected that for genuine transaction, the assessee cannot ask for waiver of the penalty. However, several case laws supports the claim of the assessee in this regard. It may also be noted here that the Ld. CIT(A) after reducing the substantial penalty, directed the A.O. to consider the balance amount of cash payment for imposing penalty under section 271D of the I.T. Act i.e., for taking or accepting

any loan or deposit in contravention of Section 269SS of the I.T. Act. Further result of the same is not brought to my notice as to what action have been taken in this regard by the A.O. It may also be noted here that assessee pleaded that in case of urgent need of the sister concern, the balance amount was paid to them. Therefore, this itself could disclose that assessee might have any reasonable cause in this regard but it appears to me that no evidence in support of the same have been filed before the authorities below. Therefore, the facts and circumstances of the case clearly show that the authorities below should have given a specific finding on the explanation of assessee in the light of the case law before them. The facts also disclose that one more opportunity may be given to the assessee to prove its case if there was any reasonable cause for making cash payment to the sister concern through evidence and material on record. Therefore, I am of the view that the matter requires reconsideration to the above extent only. I, accordingly, set aside the order of the Ld. CIT(A) to the extent of restricted penalty at Rs.95,073/- only with a direction to re-decide the

appeal of assessee for the limited purpose to verify if assessee had genuinely entered into transaction with its sister concern and its effect on penalty, whether assessee has any reasonable cause for failure to comply with the provisions of Law and whether the case Laws relied upon by the assessee are applicable to the facts and circumstances of the case. The Ld. CIT(A) shall verify as to what action have been taken by the Department for violation of Section 271D of the I.T. Act and its result, if any, have any bearing on the issue. The Ld. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee as well as to the A.O. Assessee is at liberty to produce all relevant and cogent evidence before the Ld. CIT(A) in support of the explanation.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Delhi, Dt. 12th July, 2018.
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.