

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 32/JP/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Rameshwar Prasad Gupta, Hospital & Neurology Centre Pvt. Ltd., 1-KA-40, First Floor, Vigyan Nagar, Kota.	बनाम Vs.	The ACIT, Range-1, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD 3130 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.V. Maheshwari (C.A.)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 25/09/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 23.11.2017 for Assessment Year 2011-12 wherein he has confirmed the levy of penalty U/s 271E of the I.T. Act.

2. Briefly, the facts of the case are that the Assessing Officer vide his letter dated 01.09.2015 has referred the case of the assessee for

imposition of penalty U/s 271E of the Act to the Id. ACIT, Range-1, Kota stating that the assessee has repaid the loan/deposit in cash to Dr. Rameshwar Prasad Gupta in violation of provisions of Section 269T of the Act amounting to Rs. 1,00,000/-. Thereafter, based on material on record, the Id Add. CIT has held that the assessee had repaid the above said loan/deposit in cash in violation of the provisions of Section 269T of the Act without any reasonable cause. He, therefore, levied the penalty U/s 271E of the Act amounting to Rs. 1,00,000/-.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the said levy of penalty. As per the Id. CIT(A), there were entries of cash paid during the year amounting to Rs. 1,00,000/- which constituted repayment as defined U/s 269T and the same is covered U/s 271E of the Act as not bonafide could be brought on record by the assessee for justifying such payment.

4. Now, the assessee in appeal against the said finding of the Id. CIT(A). The Id. AR has submitted that firstly, the transaction is not in the nature of loan/deposit and it is, therefore, not a case of repayment of loan at all. It was submitted that it is the payment made by the assessee against the credit balance in the account of Dr. Rameshwar Prasad Gupta Director towards his remuneration, rent etc. It was submitted that the assessee company is maintaining two accounts of Dr. Rameshwar Prasad Gupta, one current account in which all the regular transactions were entered including the impugned transaction and another account called unsecured loan account where there are transactions of repayment of loan which has been duly paid through

cheque. It was submitted that on analysis of the current account, it may be noted that the amount of rent and remuneration payable to Dr. Rameshwar Gupta which has been credited periodically and against the same, the impugned payment was made in cash. It was accordingly submitted that the transaction is therefore, not in the nature of loan/deposit at first place and therefore, there is no violation of section 269T of the act as contended by the lower authorities and therefore, there is no basis for levy of penalty U/s 271E of the Act.

5. The Id. DR is heard who has relied on the findings of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. On perusal of the record, we find that there are two accounts maintained by the assessee in the name of Dr. Rameshwar Prasad Gupta. In the first account titled as Dr. Rameshwar Gupta (creditor), there are transactions in the nature of rent and remuneration payable to Dr. Rameshwar Gupta and there are transactions by way of payment of these expenses by way of cheque as well as the impugned cash payment on 28.01.2011. Further, there is another account in the name of Dr. Rameshwar Gupta (loan account) which has opening balance of 9,18,780/- and there are repayment transactions which were paid through cheque. In light of the same, we find merit in the contention of the Id. AR that the factum of the transaction being in the nature of loan/deposit has not been established by the Revenue and fact also suggests that what has been paid by the assessee to Dr. Remeshwar Prasad in cash is towards is remuneration and the rent

payable to him. In the light of the same, we are of the view that the provisions of Section 269T of the Act are not attracted in the instant case and therefore, there is no basis for levy of penalty U/s 271E of the Act.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 25/09/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/09/2018.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Rameshwar Prasad Gupta, Kota.
2. प्रत्यर्थी / The Respondent- ACIT, Range-1, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 32/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar