

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2493/Del/2018
(Assessment Year: 2008-09)

Amit Chakrapani, S/o. shri C.K. Chakrapani, 327, Sector-46, Faridabad PAN: AEQPC1310P (Appellant)	Vs.	JCIT, Range-1, Faridabad (Respondent)
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Assessee by :	Mr. Sanchet Kumar, Adv
Revenue by:	Shri Vijay Kumar Jiwani, Sr. DR
Date of Hearing	10/08/2018
Date of pronouncement	05/11/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A), Faridabad dated 08.02.2018 for the Assessment Year 2008-09, wherein penalty u/s 271D of the Act levied by the Addl CIT, Range-I, Faridabad of Rs. 2,50,000/- is confirmed.
2. The assessee has raised the following grounds of appeal:-
 - 1.0. *That on the fact and in the circumstances of the case, the Ld. Commissioner of Income tax (Appeals) [here in after referred to as CIT (A)] has grossly erred in dismissal of appeal by the appellant that the penalty proceedings u/s 271D of the Act, passed by the Ld. Joint Commissioner in relation to imposition of penalty, under normal provisions of the Act is barred by limitation, erroneous, unjustified, wholly arbitrary and bad in law on the following grounds: (each grounds/facts is prejudice to each other)*
 - 2.0. *That on the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeal) has erred in dismissing the appeal of appellant that the penalty order dated 31/03/2016 passed by Ld. Joint commissioner is barred by limitation on the ground that order has been passed beyond the time limit prescribed under section 275 of the Act.*
 - 3.0. *That without prejudice to the above ground, Ld. CIT (A) has erred in not providing the reasonable opportunity of being heard, only one*

hearing was provided and no final hearing was provided before assessing the order.

- 4.0. *That on the facts and in the circumstances of the case and without prejudice to the grounds taken herein above, Ld. Joint Commissioner of Income Tax has ignored the ground of reasonable cause and business exigency while imposing the penalty.*
 - 5.0. *That on the facts and in the circumstances of the case and without prejudice to the grounds taken herein above, the assessee was not having any mala-fide intention to evade any tax or any rules.*
 - 6.0. *That on the facts & circumstances and without prejudice to the above ground, the stay on recovery of demand be provided till the case is not adjourned by the authority."*
3. The brief facts of the case shows that assessment u/s 147 was passed on 12.03.2015 and during the course of assessment it was noted that assessee has accepted cash loan of Rs. 2,50,000/- in violation of section 269SS of the Act. On 11.05.2015, the Id AO referred the case to the Adll. CIT for initiation of penalty u/s 271D of the Act the Addl. CIT issued notice on 09.09.2015.
 4. The assessee submitted that there is a reasonable cause for acceptance of the loan. The assessee stated that he has entered into an MOU dated 01.03.2007 and therefore, loan from Shri N.K. Sharma was taken in cash of Rs. 2,50,000/-. The assessee submitted that on 31.08.2007 the assessee received Rs. 2,40,000/- from Shri N. K. Sharma and on the same dated Rs. 2.50 lakhs was advanced to Smt Monica Mittal. He therefore, submitted that as the money was to be paid to Smt Monica Mittal same was accepted in cash from Mr. N. K. Sharma. The Id Addll. CIT rejected the explanation of the assessee and stated that there is no reasonable cause and levied a penalty of Rs. 2.50 lakhs vide order dated 31.03.2016.
 5. The assessee preferred appeal before the Id CIT(A) and before the Id CIT(A) the assessee submitted the order is time barred. The Id CIT(A) rejected the contention of the assessee and stated that penalty was initiated on 09.09.2015 and the penalty has been levied on 31.03.2016 i.e. within 6 months of initiation, therefore, it is not barred by limitation.

- On merits of the case the assessee submitted that 'means rea' need to be established before levying of penalty. The Id CIT(A) rejected the same. He held that the assessee is required to establish the 'reasonable cause' which has not been shown. Therefore, the assessee is in appeal before us.
6. The Id AR submitted that penalty is barred by limitation as the same was initiated during the course of assessment proceedings which got on 12.03.2015. he further stated that the Id AO referred the matter to the Id Addll. CIT on 11.05.2015. The Id Addll. CIT issued show cause notice on 09.09.2015 and passed the order on 31.03.2016. According to him penalty order should have been passed within 6 months from the end of the financial year in which the assessment order is passed or 6 months from the end of the month in which the penalty proceedings were initiated. He stated that penalty proceedings were initiated on 12.03.2015 when the Id AO has mentioned the default u/s 269SS. He further stated that the financial year ends on 31.03.2015. He otherwise stated that the penalty proceedings are referred on 11.05.2015, therefore, the 6 months period ends on 30.11.2015. Therefore, according to him the penalty should have been levied only up to 30.11.2015. Order levying penalty is passed on 31.03.2016 and therefore, barred by limitation. He relied on the decision of Hon'ble Delhi High Court in case of Pr. CIT Vs. JKD Capital and Finlease Ltd ITa No. 780/2015 dated 13.10.2015 and decision of M/s. Mahesh Wood Products.
 7. He further stated that on merits also penalty cannot be levied. He stated that the Id AO has intimated for levy of penalty of Rs. 2 lakhs whereas, the Id Addll. CIT has levied penalty at Rs. 2.5 lakhs.
 8. The Id DR referred to the Circular of CBDT dated 26.04.2016 and stated that penalty u/s 271D does not commenced at the level of the Id AO but at the level of Addll CIT, therefore, penalty order is within time.
 9. We have carefully considered the rival contentions and also perused the order of the Id Addl CIT. In the present case the assessment order u/s 147 read with section 143(3) of the Act was passed on 12.03.2015 wherein,

the Id Assessing Officer on page No. 5 of the assessment order has held that as assessee has accepted cash loan of Rs. 2,00,000/- from Shri NK Sharma which is clear cut violation of section 269SS of the Act. therefore, penalty proceedings u/s 271D of the Act would be initiated separately. Further, he intimated the same to the Id Addll. CIT on 11.05.2015. The Hon'ble Delhi High Court in the case of Pr. CIT Vs. Mahesh Wood Products Pvt. Ltd 82 Taxmann.com 39 (Delhi) has held that date of initiation of penalty is the date on which the case is referred to the concerned authority. According to that decision the intimation by the Id AO to the Addll. CIT was made on 11.05.2015. Therefore, respectfully following the decision of the Hon'ble Delhi High Court in case of Pr. CIT Vs. Mahesh Wood Products Ltd and JKD Capital and Fin Lease Ltd the penalty should have been levied at earliest point of time of either on 31.03.2015 or 31.11.2015, whichever is later. Therefore, as the penalty order is passed on 31.03.2016 is barred by limitation and therefore, same is quashed. In the result ground No. 1 and 2 of the appeal are allowed.

10. In view of the facts we do not find any reason to decide the issue on merits.
 11. In the results appeal of the assessee is allowed.
- Order pronounced in the open court on 05/11/2018.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 05/11/2018
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	12.11.2018
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	