

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, 'एकल सदस्यीय' चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री एन.के. सैनी, उपाध्यक्ष
BEFORE SHRI N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No. 1487/CHD/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Vikram Sood, #23, Dana Bazar, Manali Distt. Kullu (HP)	Vs. बनाम	The Addl. CIT, Mandi Range, Mandi (HP)
स्थायी लेखा सं./PAN NO: AYPPS3521B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Sh. Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Smt.Chandrakanta, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03.01.2019

उद्घोषणा की तारीख/Date of Pronouncement : 03 .01.2019

आदेश/Order

This is an appeal by the assessee against the order dated 24.8.2017 of the Commissioner of Income Tax (Appeals), Palampur

2. Following grounds have been raised in this appeal:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding that the Assessing Officer is not required to record satisfaction during the course of assessment proceedings which is illegal, arbitrary and unjustified.
2. That without prejudice to the above, the Ld. Commissioner of Income Tax Appeals) has erred in upholding the imposition of penalty of Rs.12,05,000/- under section 271D of the Act which is arbitrary and unjustified.
3. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the imposition of penalty under section 271D of the Act even in respect of one Sh. Rakesh

Thakur for which no show cause notice was issued and as such levy of penalty on this amount is against the Principals of Natural Justice which renders it arbitrary and unjustified.

- 4. That in any case, the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.*
- 5. That the order of the Ld. Commissioner of Income Tax is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.*

3. From the above grounds, it is gathered that the only grievance of the assessee relates to the sustenance of the penalty of Rs. 12,05,000/- levied by the Assessing officer u/s 271D of the Income-tax Act, 1961 (in short 'the Act').

4. The facts of the case in brief are that the assessee filed return of income on 6.12.2011 declaring an income of Rs. 4,46,020/- which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny. The Assessing officer framed the assessment at an income of Rs. 4,50,224/- by making an addition of Rs. 4,204/-. The Assessing officer initiated penalty proceedings u/s 271(1)(c) of the Act in the assessment order. Thereafter, the Assessing officer separately initiated penalty proceedings u/s 271D of the Act by observing that the assessee had received loan / deposit aggregated to Rs. 12,05,000/- from 08 persons. The Assessing officer asked the assessee to show cause and explain as to why penalty for violating the provisions of section 269SS of the Act may not be imposed upon the assessee for accepting the loan / deposits exceeding Rs. 20,000/- otherwise by the account payee cheques or account payee drafts. The Assessing officer did not find

merit in the explanation of the assessee and levied the impugned penalty.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the penalty cannot be levied because the Assessing officer has not initiated penalty proceedings while completing assessment proceedings u/s 143(3) of the Act. The Ld. CIT(A), however, did not find merit in the said submissions and sustained the penalty levied by the Assessing officer.

6. Now the assessee has come in appeal. The Ld. Counsel for the assessee submitted that Assessing officer had not recorded any satisfaction in the assessment order regarding initiation of the penalty proceedings u/s 271D of the Act, therefore, the penalty levied by the Assessing officer and sustained by the Ld. CIT(A) u/s 271D of the Act was not justified. Reliance was placed on the following case laws:-

1. *CIT Vs. Saini Medical Store, 277 ITR 420 (P&H)*
2. *CIT Vs. Sunil Kumar Goes, 315 ITR 163 (P&H)*
3. *CIT Vs. Jai Laxmi Rice Mills, 379 ITR 521 (SC)*
4. *Mohinder Pal Singh, Ramneek Sehgal & Paramjeet Kaur Vs. The Addl. CIT, ITA Nos. 192 to 197/Chd/2018, order dated 8.6.2018.*
5. *Binod Kumar Agarwal Vs. JCIT, ITA Nos. 238 & 238/Kol./2013 order dated 4.2.2016*
6. *Smt. S.B. Patil Vs. JCIT, ITA Nos.1053 & 1054/BNG./2014order dated 10.2.2016*

7. In her rival submissions, the Ld. Sr DR strongly supported the orders of the authorities below.

8. I have considered the submissions of both the parties and perused the material available on record. In the present case it is noticed that the Assessing officer passed the assessment order dated 14.3.2014 u/s 143(3) of the Act and made the addition of Rs. 4,204/- . The Assessing officer nowhere initiated penalty proceedings u/s 271D of the Act although penalty proceedings u/s 271(1)(c) of the Act were initiated. The relevant findings given by the Assessing officer in the said assessment order dated 14.3.2014 reads as under:-

“The assessee has shown bank interest in his return of income at Rs. 11428/- thus the assessee not declared interest to the extent of Rs. 4204/- (15635-11428). Hence, interest at Rs. 4204/- is treated as income of the assessee and the same is added to his total income.

From the above I am satisfied that the assessee has concealed his income and furnished inaccurate particulars of his income to the extent of Rs. 4204/- as mentioned above. Penalty proceedings u/s 271(1)(c) of the Act has been initiated separately.”

9. On a similar issue, the Hon'ble Supreme Court in the case of ‘CIT v Jai Laxmi Rice Mills’ (supra) held as under;-

“that in the fresh assessment order there was no satisfaction recorded regarding penalty proceedings u/s 271D of the Act though in that order the Assessing officer wanted penalty proceedings to be initiated u/s 271(1)(c) of the Act. Thus, the penalty under section 271D was without any satisfaction and, therefore, no such penalty could be levied.”

10. In the present case, as I have already pointed out that the Assessing officer had not recorded any satisfaction regarding the penalty proceedings u/s 271D of the Act in the assessment order passed u/s 143(3) of the Act. I, therefore, keeping in view the ratio laid down

by the Hon'ble Supreme Court in the aforesaid referred to case of 'CIT v Jai Laxmi Rice Mills' delete the impugned penalty levied by the Assessing officer and sustained by the CIT(A).

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

Order pronounced in the Open Court on 03.01.2019

Sd/-
(एन.के. सैनी/ N.K. SAINI)
उपाध्यक्ष/ VICE PRESIDENT

Dated : 03.1.2019

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar