

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 203 & 204/JP/2018
निर्धारण वर्ष / Assessment Year: 2011-12

Sunil Kumar, S/o- Shri Hoshiyar Singh, V.P. Mohan Pura, Tehsil- Chirawa, Jhunjhunu.	बनाम Vs.	Addl. Commissioner of Income Tax, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AUHPK 7246 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Anil Sharma (CA)
राजस्व की ओर से / Revenue by : Shri Jai Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/12/2018
उदघोषणा की तारीख / Date of Pronouncement : 09/01/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These appeals by the assessee are directed against the two separate orders dated 13/12/2017 of Id. CIT(A)-3, Jaipur arising from the penalty orders passed U/s 271D and 271E of the Income Tax Act, 1961 (in short the Act) for the A.Y. 2011-12. The assessee has raised following grounds in these appeals:

Grounds of ITA 203/JP/2018

"1. Under the facts and circumstances of the case, the Id CIT(A) is not justified in confirming the penalty of Rs. 3,36,000/- levied U/s

271D of the IT Act, 1961 for accepting alleged cash deposit of equivalent amount in contravention of Section 269SS of the Act.

2. *Therefore, it is prayed to cancel the penalty order and delete the relevant demand.”*

Grounds of ITA 204/JP/2018

- “1. *Under the facts and circumstances of the case, the Id CIT(A) is not justified in confirming the penalty of Rs. 3,36,000/- levied U/s 271E of the IT Act, 1961 for making alleged cash payment of deposit of equivalent amount in contravention of Section 269T of the Act.*
2. *Therefore, it is prayed to cancel the penalty order and delete the relevant demand.”*

2. The assessee is engaged in the business of supply of building material and filed his return of income declaring income U/s 44AD of the Act of Rs. 3,08,167/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has made cash deposit of Rs. 23,36,000/- in his personal savings bank account. The assessee has explained the source of cash deposits which includes a sum of Rs. 2,36,000/- belonging to the friend of the assessee Shri Shreeram, S/o- Shri Richpal Singh deposited for making a Demand Draft (D.D.) for participating in the tenders of liquor shops to be auctioned by the Excise Department. The Assessing Officer had accepted the explanation of source of deposit and consequently no addition was made in the income of the assessee. However, the Assessing Officer referred the matter for

initiation of the penalty proceedings U/s 271D and 271E of the Act as the assessee received the loan/deposit of Rs. 3,36,000/- as well as repayment of the same in cash in violation of provisions of Section 269SS and 269T of the Act respectively. The Additional CIT vide orders dated 23/11/2015 levied the penalty U/s 271D as well as 271E of the Act of Rs. 3,36,000/- each. The assessee challenged the action of levy of penalty before the Id. CIT(A) and contended that it was neither a loan taken by the assessee nor the deposits but the amount of Rs. 3,36,000/- belong to the friend of the assessee who deposited in the bank account of the assessee for making the D.D. in favour of the Excise Department for participating in the tenders of the liquor shop. When he did not succeed in the tender, the D.D. were got cancelled and the amount was refunded to the friend. The Id. CIT(A) did not accept this contention of the assessee for want of any documentary evidence and accordingly, confirmed the levy of penalty U/s 271D and 271E of the Act.

3. Before us, the Id AR of the assessee has submitted that the assessee vide its letter filed before the Assessing Officer explained the source of cash deposit and also filed the affidavit of Shri Shreeram, S/o- Shri Richpal Singh, who has accepted that the amount was deposited by him in the bank account of the assessee for making D.D. in favour of

the Excise Department for participating in the tender of liquor shop, subsequently, the D.D. were cancelled and the amount was refunded to him, therefore, the Assessing Officer while completing the assessment U/s 143(3) of the Act, accepted the explanation of the assessee regarding the source of deposit of Rs. 3,36,000/- from Shri Shreeram, S/o- Shri Richpal Singh. Once the assessee has explained the source as the amount belongs to Shri Shreeram, who got the D.D. from the bank account of the assessee for participating in the tender of the liquor shop then it will not fall in the ambit of the term loan or deposit received by the assessee so as to attract the provisions of Section 269SS and 269T of the Act and consequently the penalty levied U/s 271D and 271E of the Act are not justified. The Id AR has further submitted that the depositor Shri Shreeram, was not having any bank account, therefore, the same was taken by way of cash to meet the urgent business requirement of participating in the tender of liquor shops. Further the assessee being the small business man engaged in the supply of building material and having rural background, was not aware about the technical provisions of Section 269SS or 269T of the Act. Therefore, the assessee was under bonafide belief that the relevant transaction with Shri Shreeram are not in violation of any law. The Id AR has thus

submitted that the said explanation of the assessee is a reasonable cause for failure to comply with the provisions of Section 269SS ad 269T of the Act as provided U/s 273B of the Act. Hence, he has submitted that the penalty levied U/s 271D and 271E of the Act be deleted. In support of his contention he has relied upon the decision of Hon'ble Jharkhand High Court in the case of OMEC Engineers Vs CIT 169 Taxman 158 (Jharkhand) as well as the decision of Hon'ble Gauhati High Court in the case of CIT Vs Bhagwati Prasad Bajoria (HUF) 133 Taxman 426 (Gau). The Id AR has also relied upon the decision of Mumbai Benches of the Tribunal dated 18/02/2015 in the case of Chemfert Traders (Bombay) Pvt. Ltd. Vs ACIT 1(1) in ITA Nos. 720 & 721/Mum/2011. Hence, the Id AR has pleaded that the penalty levied U/s 271D and 271E of the Act may be deleted.

4. On the other hand, the Id DR has submitted that there is no dispute that the amount of Rs. 3,36,000/- was deposited in cash by the assessee as taken from one Shri Shreeram, S/o- Shri Richpal Singh, therefore, the same is in contravention of provisions of Section 269SS of the Act. Further the said amount was also repaid by the assessee to Shri Shreeram in cash and again it is in contravention of the provisions of Section 269T of the Act. He has further contended that the assessee has

only made submissions and not filed any documentary evidence to establish that the depositor used the amount for his own purpose of obtaining the license in his own name. No correspondence from the Excise Department to the effect was produced by the assessee in support of the claim. Further the assessee also could not establish that the bidding was in the name of depositor and not in the name of the assessee. Even otherwise making the D.D. does not require necessary a bank account and therefore, the explanation of the assessee remained unsubstantiated. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of cash deposited in the bank account of the assessee. In response, the assessee explained that the amount of Rs. 15.00 lacs were withdrawn from the business concerned and further an amount of Rs. 5.00 lacs was out of past savings of the father of the assessee and the remaining amount was explained to the extent of Rs. 3,36,000/- as the cash deposited by one Shri Shreeram, S/o- Shri Richpal Singh for making the D.D. in favour of the Excise Department for participating in tender of liquor shop. The Assessing Officer accepted the explanation of the

assessee and did not make any addition on account of unexplained cash deposit in the bank account of the assessee. The order of the Assessing Officer passed U/s 143(3) of the Act is completely silent about the satisfaction of the Assessing Officer regarding the source of cash deposits explained by the assessee. Thus, once the Assessing Officer has not disputed the explanation of the assessee while framing the assessment U/s 143(3) of the Act and explanation furnished by the assessee regarding the deposit of Rs. 3,36,000/- makes it clear that this amount was deposited for making a D.D. in favour of the Excise Department for participating in the tender of the liquor shops by one Shri Shreeram, S/o- Shri Richpal Singh. The assessee also submitted an affidavit of Shri Shreeram in this regard. The Assessing Officer was satisfied with this explanation of the assessee and did not raise any objection about the purpose and source of deposit. Once the Assessing Officer has accepted the explanation as furnished by the assessee during the assessment proceedings and has not given any finding about the nature of the deposit in the bank account then the said explanation cannot be out rightly rejected in the penalty proceedings U/s 271D and 271E of the Act. Even otherwise the initiation of penalty proceedings U/s 271D and 271E of the Act is based on the premises that the assessee

has taken this amount of Rs. 3,36,000/- from one Shri Shreeram and it was also repaid by the assessee to the said person but since the receipt and payment was in cash, therefore, it was held to be in violation of provisions of Section 269SS and 269T of the Act. It is pertinent to note that when the explanation of the assessee that the said amount was deposited by the said person in the bank account of the assessee for the purpose of taking a D.D. in favour of the Excise Department for participating in the tender of liquor shops then it would not fall in the ambit of loan or deposits as contemplated in the provisions of Section 269SS and 269T of the Act. Therefore, once it is not a loan taken by the assessee for his requirement but the explanation was accepted by the Assessing Officer that this amount was deposited by Shri Shreeram for his requirement of participating in the tender of the liquor shops then in absence of any fresh material or contrary record to show that the amount was taken as a loan by the assessee for assessee's requirement, the penalty levied U/s 271D and 271E are not justified. Accordingly, In view of the facts and circumstances of the case when the Assessing Officer was fully satisfied with the explanation that the amount was deposited by Shri Shreeram for the purpose of making D.D. for participating in the tender of the liquor shop then the said explanation of

the assessee itself is reasonable explanation to show that the case of the assessee does not fall in the provisions of Section 269SS or 269T of the Act. Accordingly, we delete the penalty levied in both these appeals U/s 271D and 271E of the Act.

6. In the result, both these appeals of the assessee are allowed.

Order pronounced in the open court on 09th January, 2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09th January, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Sunil Kumar, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- The Addl.CIT, Jhunjhunu.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 203 & 204/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar