

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.835 & 836/Ind/2017**

**Assessment Year: 2011-12 & 2012-13**

Shri Tejinder Singh E-1/103, Arera Colony Bhopal (M.P.)	<b>बनाम/ Vs.</b>	Additional Commissioner IT, Range-1 Bhopal
(Appellant)		(Revenue )
P.A. No.ADOPS9169H		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, A.Rs
Respondent by	Shri V.J. Boricha, D.R.
<b>Date of Hearing:</b>	<b>06.08.2019</b>
<b>Date of Pronouncement:</b>	<b>07.08.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

These two appeals by the assessee pertaining to the assessment years 2011-012 & 2012-13 against consolidated order of the Ld. CIT(A)-1, Bhopal dated

20.9.2017 whereby the Ld. CIT has confirmed levy of penalty u/s 271E & 271D of the Income Tax Act, 1961 (hereinafter called as 'the Act'). First we take up the assessee's appeal in ITA No.835/Ind/2017. The assessee has raised following grounds of appeals:-

1. *That on the facts and in the circumstances of the case and in law, the findings of learned A.O. are bad and opposed to facts, equity and law and are, therefore, unsustainable law.*
2. *That on the facts and in the circumstances of the case and in law, the learned A.O. erred in making a scrutiny assessment u/s 143(3) of the Act and wrongly assumed loans and advance of Rs.10.00 lacs from L.N. Gupta, without reason and open the case u/s 148 of the Act.*
3. *That on the facts and in the circumstances of the case and in law, the learned A.O. erred in imposing penalty of section 271D of Rs.10.00 lacs without appropriate reasons and justification.*
4. *Because the Ld. Commissioner IT (Appeals) has dismissed the appeal of assessee and confirmed the additions of Rs.10,00,000.00 lacs as cash deposits without appropriate opportunity of hearing.*
5. *The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.*

2. Briefly stated facts are that a search & seizure operation was carried out at the residential premises of Gupta sons group of cases u/s 132(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') on 28.10.2010. During the course of search at residential premises of Shri

L.N. Gupta at E-1/55, Arera Colony, Bhopal, loose papers LPS pages 82 and 83 were found and seized. It was observed by the A.O. that as per the documents so seized, the assessee had taken unsecured loan of Rs.10 lakhs from Shri Anil Gupta in cash on 24.10.2010. Further, the assessee deposited a security cheque dated 24.4.2011 of Andhra Bank with Shri Anil Gupta. The loan was to be repaid on 24.4.2011. The case of the assessee was reopened after recording the reasons. During the course of assessment, the assessee was asked to explain the taking of loan and repayment of the same. The A.O. after considering the submissions, came to the conclusion that the assessee had received an unsecured loan of Rs.10 lakhs from Shri Anil Gupta during the financial year 2010-11 in violation of provision of section 269SS of the Act. Therefore, a notice u/s 271D of the Act was issued and after considering the submissions, the A.O. levied penalty u/s 271D of the Act of Rs.10 lakhs.

3. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions sustained the penalty. Before us, Ld. Counsel for the

assessee reiterated the submissions as made in the written submissions which are reproduced as under:

#### SYNOPSIS

Search u/s 132 : 28.10.10 At Residential premises of Shri L.N. Gupta

Found & seized : LPS Pg 82 and 83

Details of Loose Paper:-

LPS- Pg 82, 83 (Penalty order, Pg 2)

1. Pg 82 is the receipt dated 24.10.10/24.04.11 in the letter head of assessee that 10 lakh Rupees received from Shri Anil Gupta as loan for the period of 6 months. The Interest was paid in advance and repayment is made through Chq no 170249 of Andhra Bank amounting to Rs. 10 lakh.
2. Pg 83 is the Cheque dated 24.04.11, in favour of Shri Anil Gupta from Andhra Bank , chq no 170249.
3. The Id AO alleged that :-
  - a. Unsecured Loan of Rs. 10 lakh was taken by assessee from Shri Anil Gupta S/O Shri L.N Gupta in cash.
  - b. Statement of Shri L.N Gupta on behalf of his son Shri Anil Gupta that the said loan were given out of his undisclosed income and an admission of Rs. 35 lakh was also made. The unsecured loan was given out of undisclosed source of income to various persons; the assessee is one of them who received unsecured loan from Shri Anil Gupta.
  - c. Since the cash loan was taken in violation of provisions of Sec 269SS of the IT Act, therefore penalty u/s 271D amounting to Rs. 10 lakh was levied in A.Y. 2011-12.
  - d. Since the assessee have repaid the unsecured loan of Rs. 10 lakh received from Shri Anil Gupta in cash during F.Y. 2011-12 i.e A.Y. 2012-13 in violation of provisions of Section 269 T, thus penalty u/s 271E amounting to Rs. 10,00,000/- was levied.
4. The Id CIT(A) confirmed the levy of penalty u/s 271D for A.Y 2011-12 and 271E for A.Y.2012-13 amounting to Rs. 10 lakh each respectively.

#### SUBMISSIONS

1. Presumption u/s 132(4A) is rebuttable presumption and not conclusive

The Basis of addition being LPS -82 and 83 were found at the premises of Shri L.N. Gupta, who surrendered on behalf of his son Shri Anil Gupta. That the Loose paper contents may be used against the person from whom it was found but it cannot be used against any third party like the assessee. The presumption under section 132(4A) can be applied against the person from whom the books of account or the documents were found and not against any third party. In support of this contention, reliance is placed upon the following decisions :—


- CBI v. V.C. Shukla 3 SCC 410 (SC).
- Prarthana Construction (P.) Ltd. v. Dy. CIT [2001] 118 Taxman 112 (Ahd.-Trib.).
- Unique Organizers & Developers (P.) Ltd. v. Dy. CIT [2001] 118 Taxman 147 (Ahd.-Trib.)

Reliance is placed on : ITAT Mumbai- Straptex(India)(P.) Ltd vs DCIT(2003) 84 ITD 320 (Mum)

2. **Opportunity for Cross Examination not provided.** The statement of Shri L.N Gupta recorded at back of assessee were not provided and the opportunity of cross examination not provided. The very basis of Id AO's presumption are statement of third party.
3. The Appellant approached his friend Shri Anil Gupta for financial assistance. He was asked to provide a post dated cheque of Rs. 10 Lakhs along with note of assurance that money will be refunded. Thus, the appellant submitted the hand written note dated 24.10.10 as well as post dated cheque dated 24.04.2011. The financial assistance could not be availed by appellant.
4. Documents attracting the provisions of Sec 269SS and 269T nowhere state that transaction was in **cash**, the receipt also do not state that loan was taken in cash.( Refer Penalty Order u/s 271D dated 12.06.2015 for A.Y. 2011-12 pg no 2.) The Cheque was given by assessee to Shri Anil Gupta, which could not be deposited as search proceedings initiated and the cheque was seized by the department representative. The presumption that cash was given back lacks any corroborative evidence and is just an assumption of assessing officer.

It is therefore submitted that the Penalty may kindly be deleted.

Submitted.

  
[Ashish Goyal]  
Advocate

4. Ld. D.R. opposed these submissions and supported the order of the authorities below. Ld. D.R. relied on the provisions of section 271D of the Act and submitted that there is no ambiguity either on facts or on law. Therefore, the A.O. was justified in imposing the penalty.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. During the course of hearing, Ld. Counsel for the assessee fairly conceded that the assessee has not challenged the addition of this amount. Therefore, the factum of obtaining loan is proved. Considering the rival submissions and the facts available on record, the assessee could not controvert the finding of the authorities below in respect of the evidences gathered during the search which proves receipt of loan in cash, therefore, we do not see any reason to interfere in the finding of the authorities below. The grounds raised in this appeal are

dismissed. Appeal of the assessee in ITA No.835/Ind/2017 is dismissed.

6. Now coming to ITA No.836/Ind/2017. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case and in law, the findings of learned A.O. are bad and opposed to facts, equity and law and are, therefore, unsustainable law.*
2. *That on the facts and in the circumstances of the case and in law, the learned A.O. erred in making a scrutiny assessment u/s 143(3) of the Act and wrongly assumed loans and advance of Rs.10.00 lacs from L.N. Gupta, without reason and open the case u/s 148 of the Act.*
3. *That on the facts and in the circumstances of the case and in law, the learned A.O. erred in imposing penalty of section 271E of Rs.10.00 lacs without appropriate reasons and justification.*
4. *Because the Ld. Commissioner IT (Appeals)-I has dismissed the appeal of assessee and confirmed the additions of Rs.10,00,000.00 lacs as cash deposits without appropriate opportunity of hearing.*
5. *The appellant craves leave to add/alter any of the grounds of appeal before or at the time of hearing.*

7. The facts are identical as were in ITA No.835/Ind/2017 except that in the present case it is inferred that the repayment of loan was made in cash. Before the A.O., it was submitted by the assessee that there is no evidence suggesting that the loan was repaid in

cash. However, the A.O. did not accept the contention of the assessee and proceeded to impose penalty u/s 271E of the Act. The assessee preferred an appeal before Ld. CIT(A), who sustained the imposition of penalty. Ld. Counsel for the assessee submitted that the penalty has been levied purely on the guess work. He relied on the provisions of section 271E of the Act and also the provisions of section 269T. He submitted that the penalty can be levied only in the event where the assessee has repaid the loan in cash. It is not the case where the authorities below have found any evidence of making repayment of loan in cash. Ld. D.R. opposed the submissions and supported the orders of the authorities below.

8. We have heard the rival submissions, perused the materials available on record and gone through the orders

of the authorities below. We find that the Ld. CIT(A) has decided the issue in paras 4, 5 & 6 of her order as under:

4. I have carefully considered the facts of the case, penalty orders and the submissions filed by the appellant. All the grounds of appeal are being taken up together. The appellant in his submissions has broadly argued against the imposition/levy of penalty for the following reasons:

- The penalty has been on the basis of mere assumptions and vague documents
- Loose paper was found at the premises of Sh. L. N. Gupta. However the loan was given by Sh. Anil Gupta.
- Though the cheque and letter found from the premises of Sh. L. N. Gupta, belonged to the appellant, but the same was not signed by him.
- The A.O/Addl.CIT presumed that money was refunded/repaid to Sh. Anil Gupta/L.N. Gupta
- The appellant is a senior citizen
- There are no loans in the books of accounts, hence section 269SS and section 269T of the Act can't be applied.

5. The issues raised by the appellant are not considered to be acceptable in view of the overwhelming evidence found and seized during the course of search at the premises of Gupta family. The evidences found indicating disbursal of cash loans to the appellant were not only documentary as mentioned in details in the order of the Addl. CIT but were also supported by the unambiguous admission of the same by Sh. L.N. Gupta. In view of such incontrovertible evidences, it is not possible to accept the plea of the appellant that the loan was never received in cash. As far as repayment of the loan is concerned, it is noticed that the loan taken in cash was

never returned back by the appellant in cheque. The appellant has also not asserted or even claimed that the aforesaid loan taken in cash is still payable by him. In view of such facts and circumstances of the matter, the only possible conclusion is that the appellant has repaid the loan in cash.

6. As far as the claim of the appellant that section 269SS/T is applicable only if the cash loan accepted or repaid appears in the books of account, it is undisputed that neither section 269SS nor section 269T provides for the requirement of entry of cash loan in the books of account. The section unambiguously provides that no person shall take or accept from any other person otherwise than by an account payee chq of bank draft. It is nowhere provided that section 269SS or section 269T triggers only if cash loan received or repaid is entered in the books.

9. We find merit into the contention of Ld. A.R. that there is nothing on record suggesting that the loan amount was repaid in cash by the assessee. The revenue has considered the terms of loan as if the same has been repaid in cash. There is no receipt by the person who has given loan to the assessee accepting or acknowledging the repayment of the loan in cash by the assessee. Even in the statement recorded by the revenue authorities, nothing of this sort is stated by Shri L.N. Gupta, father of Shri Anil

Gupta. Therefore, under the facts of the present case and in the absence of the proof that assessee had made repayment of loan in cash, in our considered view, imposition of penalty u/s 271E would not be justified. The A.O. ought to have brought some material suggesting that the assessee has made repayment of loan in cash, therefore, we hereby direct the A.O. to delete the penalty. Therefore, the appeal of the assessee in ITA No.836/Ind/2017 is allowed.

10. In the result, the appeal of the assessee in ITA No.835/Ind/2017 is dismissed and the appeal of the assessee in ITA No.836/Ind/2017 is allowed.

*Order was pronounced in the open court on 07.08.2019.*

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 07/08/2019  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order

**Assistant Registrar, Indore**