

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 878 & 879/JP/2019  
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Jogendra Singh, Village- Kundali, Dist. Sikar-332 001.	बनाम Vs.	Addl. CIT, Range- Sikar, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN No. AZYPS 5946 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.A. Verma (Tax Practitioner)

राजस्व की ओर से / Revenue by: Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 20.09.2019.

घोषणा की तारीख / Date of Pronouncement : 24/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These two appeals by the assessee are against two separate orders of the Id. CIT (Appeals)-3, Jaipur both dated 02.05.2019 arising from the penalty order passed under section 271E and 271D of the IT Act for the assessment year 2011-12 respectively. The assessee has raised common grounds in these appeals except the provisions of the Act under which the penalty was levied. The grounds raised in respect of penalty levied under section 271E in ITA No. 878/JP/2019 are as under :-

1. On the facts and circumstances of the case, the order dated 02.05.2019 passed by the CIT (A)-3, Jaipur against penalty order u/s 271E of the IT Act is illegal and bad in law as penalty imposed u/s 271E was barred by limitation and no satisfaction was recorded by the AO in his Asset. Order.

2. On the facts and circumstances of the case, the CIT (A) has erred in approving the penalty order u/s 271E of the IT Act passed by the Addl. CIT-Range, Sikar on dated 27.02.2015 without appreciating the facts that repayment of Rs. 6,71,250/- made in cash by the assessee to his family members were found genuine by Assessing Officer in his assessment order passed u/s 143(3) of the IT Act and no additions were made thereon.
3. On the facts and circumstances of the case, the CIT (A) has erred in approving the penalty order u/s 271E of the IT Act passed by the Addl. CIT-Range, Sikar on dated 27.02.2015 without appreciating the facts that repayment of Rs. 6,71,250/- made in cash by the assessee to his family members were his real cousin brothers/uncle and having only agriculture income, no PAN NO. and no bank a/c.
4. On the facts and circumstances of the case, the CIT (A) has erred in approving the penalty order u/s 271E of the IT Act passed by the Addl. CIT-Range, Sikar on dated 27.02.2015 without appreciating the facts that repayment of Rs. 6,71,250/- made in cash by the assessee to his family members was taken as a capital contribution as per joint venture agreement dated 04.01.2011 and thus, not covered u/s 269T of the IT Act.
5. On the facts and circumstances of the case, the CIT (A) has passed the erroneous order without application of his mind as fresh evidence i.e. joint venture agreement dated 04.01.2011 filed u/r 46A of IT Rules during the appeal proceedings has been completely ignored though remand report was called from the Assessing Officer in which genuineness of the document was not questioned.
6. That the appellant craves permission to add, amend, alter, modify or to withdraw any of the ground of appeal."

2. The assessee is an Individual and filed his return of income on 31<sup>st</sup> March, 2012 declaring total income of Rs. 1,59,890/-. The assessment was completed on 17<sup>th</sup> February, 2014 under section 143(3) of the IT Act at a total income of Rs. 2,24,487/-. Subsequently, the AO referred the matter to Addl. CIT for initiation of penalty proceedings under section 271D and 271E in respect of transactions of

receipt of a sum of Rs. 7,50,000/- in cash from three persons Rs. 2,50,000/- each and subsequently repaid the same in cash. The penalties under section 271D as well as 271E were imposed by the Additional CIT vide order dated 26.02.2015 holding that the assessee is in default within the meaning of section 269SS and 269T and consequently liable for penalty under section 271D and 271E respectively for a sum of Rs. 7,50,000/- each equivalent to the amount of receipt of the amount in cash and repayment of the same. The assessee challenged the action of the AO before the Id. CIT (A) and contended that the assessee wanted to apply for liquor shop from Excise Department of Rajasthan and for that purpose the assessee was required to deposit License Fee within a stipulated time, thus the assessee has collected an amount of Rs. 7,50,000/- in cash from his three family members of Rs. 2,50,000/- each on urgent basis. The application of the assessee was not accepted by the Excise Department and the License sought by the assessee for liquor shop was not allotted to the assessee, therefore, subsequently the assessee refunded the said amount to the family members. Thus the assessee claimed that it was a payment transaction of receipt of money from the family members and repayment of the same. The assessee also claimed that the assessee and the other three members have entered into a joint venture agreement dated 4<sup>th</sup> January, 2011 for doing the business of sale of liquor under the said License to be allotted in the name of the assessee. The assessee further explained that all the three persons are agriculturists and not having any bank account, therefore, the amount was received in cash and also repaid in cash. The Id. CIT (A) did not accept the contention of the

assessee and consequently confirmed the levy of penalty under section 271D and 271E while passing the impugned order.

3. Before the Tribunal, the Id. A/R of the assessee has submitted that the AO has not disputed the genuineness of the transaction and even not initiated the penalty proceedings in the assessment order. He, however, further submitted that since the money was collected for a specific purpose and it was in contravention by all the parties, therefore, it is not falling in the category of loan or advance sought as to in contravention of provisions of section 269SS and 269T of the Act. Thus the Id. A/R has submitted that even the said sum taken by the assessee from his close relatives is exempt under section 56 of the Act. He has referred to the affidavits of all the three persons declaring that they were not having any PAN or any bank account in their names. Even they were not having any income other than the agricultural income, therefore, the amount of Rs. 2,50,000/- each were handed over to the assessee from their past savings of agricultural income and for the purpose of payment of License Fee for the liquor shop to be awarded by the Excise Department of Government of Rajasthan. Since the assessee could not get the license, therefore, the said amounts collected from the family members were refunded. The Id. A/R has, thus, contended that the assessee has explained the reasonable cause for receiving the amount in cash and repayment of the same in cash and, therefore, the case of the assessee falls under section 273B of the Act. In support of his contention, he has relied upon the following decisions :-

CIT vs. Raj Kumar Sharma  
294 ITR 131 (Raj.)

CIT vs. Saini Medical Store  
277 ITR 420 ( P&H)

CIT vs. Sunil Kumar Goel  
315 ITR 163 ( P&H)

4. On the other hand, the Id. D/R has submitted that there is no dispute that the assessee has received a sum of Rs. 7,50,000/- in cash and also repaid the same in cash. Therefore, there is a violation of provisions of section 269SS and 269T and consequently the penal provisions of section 271D and 271E are attracted in this case. The assessee has not brought any material on record to show the urgency/expediency for accepting the amount in cash and then again repayment of the same in cash. She has relied upon the orders of the authorities below and submitted that the Id. CIT (A) has distinguished the facts while passing the impugned order.

5. I have considered the rival submissions as well as the relevant material on record. The assessee has received a sum of Rs. 7,50,000/- in cash from three persons as under :-

Sl.No.	Name of the person	Amount	Date
1	Shri Mool Chand Ola S/o Shri Laxman Ram, Kudali, Sikar	Rs. 2,50,000/-	24.02.2011
2	Shri Sunda Ram S/o Shri Ram Lal, Kudali, Sikar	Rs. 2,50,000/-	24.02.2011
3	Shri Madan Singh S/o Shri Jawahar Singh, Kudali, Sikar	Rs. 2,50,000/-	24.02.2011

The assessee explained that all three persons are close family members i.e. real cousin and real uncle. The persons at sl. nos. 1 & 2 are real Cousins and at sl. no. 3 is real uncle of the assessee. This is also not disputed by the AO that all these persons are agriculturists and having no other income than the agricultural income. The AO has not disputed the fact that the assessee has received these amounts from these agriculturists and also repaid the same to them in cash. The assessee has filed the affidavits of these three persons wherein they have affirmed on oath that they are not having any PAN or any bank account in their names. Once this fact of not having any PAN and bank account by these three close relatives of the assessee is not in dispute, then the receipt of the amount and repayment of the same in cash falls in the exception as the transaction cannot be completed through banking channel, as well as in the category of reasonable and bonafide explanation under section 273B of the Act. The Hon'ble Punjab & Haryana High Court in case of CIT vs. Sunil Kumar Goel (supra) has considered this issue in para 11 to 14 as under :-

"11. The explanation tendered by the respondent-assessee which has been taken into consideration by the Income-tax Appellate Tribunal was that the action of the respondent-assessee was *bona fide* and not aimed at avoiding any tax liability. So far as the instant issue is concerned, the Income-tax Appellate Tribunal arrived at the conclusion, that the action of the respondent-assessee had not resulted in the infraction of any law, inasmuch as, the default committed by him was technical and venial in nature. The Income-tax Appellate Tribunal also expressed the view, that no prejudice was caused to the revenue, inasmuch as, there was no avoidance of tax or tax evasion at the hands of the respondent-assessee. Relying upon the judgment rendered by this Court in *CIT v. Saini Medical Store* [\[2005\] 277 ITR 420](#) that *bona fides* and genuineness of the transaction, would constitute a "reasonable cause" for not invoking the provisions of sections 271D and 271E of the Act, the Income-tax Appellate Tribunal arrived at the conclusion that the respondent-assessee has been successful to show "reasonable cause". And accordingly the Income-tax

Appellate Tribunal returned a finding, that acceptance of the return of payments received by the respondent-assessee, by way of cash, at the hands of the respondent-assessee, ought to be overlooked, in the facts and circumstances of this case.

**12.** As against the aforesaid conclusion drawn by the Income-tax Appellate Tribunal, it was submitted by the learned counsel for the appellant-revenue, that on eight different occasions different amounts ranging from Rs. 10,000 to 30,000 were taken by way of cash, by the respondent-assessee as loans in conscious and deliberate disregard of obligation envisaged under section 269SS of the Act. And the aforesaid loans were then returned by way of cash, again, in conscious disregard of the obligation envisaged under section 269T of the Act. It was also submitted by the learned counsel for the appellant-revenue, that it had not been argued at the hands of the respondent-assessee, that action of the respondent-assessee was not deliberate, or that, the same was under a *bona fide* belief that he could not accept or return a loan(s) in excess of Rs. 20,000 by way of cash. It is, therefore, the submission of the learned counsel for the appellant-revenue, that the onus to establish *bona fides* at the hands of the respondent-assessee, squarely rests on the shoulder of the respondent-assessee. In addition to the above, it is submitted that a breach of the provisions of the Act, cannot be justified on alleged *bona fide* belief, which cannot be illustrated through cogent evidence. It is, therefore, the submission of the learned counsel for the appellant-revenue, that in the facts and circumstances of the present case, the respondent-assessee, could not be deemed to have established a reasonable cause for not abiding by the provisions of sections 269SS and 269T of the Act.

**13.** Having given our thoughtful consideration to the submissions advanced by the learned counsel for the rival parties, we are of the view that the finding that there was reasonable cause shown by the respondent-assessee, is a finding of fact. This emerges from the decision rendered by this Court in *Saini Medical Stores'* case (*supra*), wherein, this Court has *inter alia* held as under:—

"6.1 'As pointed out earlier, there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment made for the year under consideration. Even if, there is any ignorance, which resulted in the infraction of law, the default is technical and venial which did not prejudice the interests of the revenue as no tax avoidance or tax evasion was involved. To my mind, *bona fide* belief coupled with the genuineness of the transactions would constitute reasonable cause under section 273B for not invoking the provisions of section 271E of the Act. The impugned order of penalty is cancelled.'

The findings of the Commissioner of Income-tax (Appeals) have been confirmed in appeal by the Tribunal.

Therefore, the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal that the assessee had shown reasonable cause for the failure to comply with the provisions of section 269T of the Act is a

finding of fact based on appreciation of material on record. It does not give rise to any question of law, much less substantial question of law.

Accordingly, the appeal is dismissed." (p. 425)

**14.** The Income-tax Appellate Tribunal was right in recording its conclusion that a "reasonable cause" had been shown by the respondent-assessee. The Income-tax Appellate Tribunal relied on the fact that the respondent-assessee had produced his cash books, depicting loans taken by him unilaterally before the revenue. Another fact taken into consideration was, that no prejudice was caused to the revenue, in the instant action of the respondent-assessee inasmuch as, the respondent-assessee did not attempt by the impugned act to avoid any tax liability. Furthermore, there is no dispute about the fact, that the instant cash transactions of the respondent-assessee were with the sister concern, and that, these transactions were between the family, and due to business exigency. A family transaction, between two independent assesseees, based on an act of casualness, specially in case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, in our view establishes "reasonable cause" under section 273B of the Act. Since the respondent-assessee, had satisfactorily established "reasonable cause" under section 273B of the Act, he must be deemed to have established sufficient cause for not invoking the penal provisions (sections 271D and 271E of the Act) against him."

Accordingly, in view of the facts and circumstances, when the three persons who are close family members of the assessee were not having any bank account in their names, then the provisions of section 271D and 271E cannot be attracted. The Id. CIT (A) while passing the impugned order has observed that the assessee has not established a reasonable cause or urgency as well as the case law relied upon by the assessee are distinguishable as in the present case loans were paid to non relative. The said finding of the Id. CIT (A) is contrary to the fact that all the three persons from whom the amount was received and repaid are relative of the assessee. Hence in the facts and circumstances of the case, the assessee has duly discharged his obligation of explaining a reasonable cause for receiving and repayment of the amount in cash, and therefore, in view of the provisions of section 273B, the

penalties under section 271D and 271E are not leviable. Accordingly the same are deleted in both the appeals.

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

Order is pronounced in the open court on 24/09/2019.

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

Jaipur

Dated:- 24/09/2019.

Das/

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

1. The Appellant- Shri Jogendra Singh, Sikar.
2. The Respondent – The Addl. CIT Range-Sikar, Sikar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 878 & 879/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar