

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD òSMCö BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA Nos. 782 & 783/Ahd/2018  
Assessment Year 2008-09**

Shri Chhanabhai Amthabhai Patel, 19, Vrundavan Society Part-3, Opp. Akshardham Flat Ranip. Ahmedabad-382480 PAN: ABKPP0486C (Appellant)	Vs	The ITO, Ward-5, Patan (Respondent)
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**Revenue by: Shri N.G. Goyal, Sr. D.R.  
Assessee by: Shri Jimit Shah, A.R.**

Date of hearing : 20-01-2020  
Date of pronouncement : 28-01-2020

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two appeals filed by assessee for A.Y. 2008-09, arise from order of the CIT(A), Gandhinagar, Ahmedabad dated 04-01-2018, in proceedings under section 271(1)(c) and 271D of the Income Tax Act, 1961; in short òthe Actö.

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2. The solitary ground of appeal of the assessee is against the decision of Id. CIT(A) in confirming the action of the assessing officer in levying the penalty amounting to Rs. 7 lacs u/s. 271D of the I.T. Act, 1961.

3. The fact in brief is that assessee has not filed return of income for the assessment year 2008-09. As per AIR information, the assessing officer has noticed that assessee has deposited cash of Rs. 28,27,630/- in his saving bank account maintained with Mehsana Co-operative Bank Ltd. Thereafter, the assessment was reopened u/s.147 of the act by issuing of notice u/s. 148 of the act on 27<sup>th</sup> March, 2015. The assessee has not made compliance with the notice u/s. 148 of the act and no return of income was filed. Therefore, the assessing officer has show caused the assessee to explain why not the cash deposited in the bank account to the amount of Rs. 28,27,630/- should be added to his total income. In response, the assessee has filed return of income declaring total income of Rs. 2,05,860/- on 25<sup>th</sup> Jan, 2016 along with letter dated 23<sup>rd</sup> Jan, 2016 explaining that cash deposited in his bank account was obtained from his farmer friends and relatives from time to time and deposited the same into the bank account. The assessee has also attached extract of 7/12 of those persons along with confirmations to the amount given by those persons to the assessee. The assessee also stated that he was a farmer and was earning an agricultural income amounting to Rs. 15,000/- for the year under consideration and earlier he was working with the Gujarat State Road Corporation Ltd. It is also stated that he was not maintaining any books of account and he was not doing any business. The assessing officer has stated that assessee has taken cash loan of Rs. 7 lacs from three

parties, namely Shri Vishnubhai Patel, Shri Baldevbhai Patel and Shri Chetanbhai Patel during the year under consideration and these loans were taken in violation of section 269SS of the act, therefore, the assessing officer had referred the case to the Joint CIT for levying of penalty u/s. 271D of the act.

4. During the course of penalty proceedings u/s. 271D of the act, the JCIT stated that assessee has accepted the following amount otherwise than by an account payee cheque or account payee draft.

<i>S. No.</i>	<i>Name of the person claimed from whom the amount is received</i>	<i>Amount</i>
1	<i>Shri Vishnubhai Rambhai Patel At: Ladol, Tal. Vijapur , Mehsana</i>	<i>2,75,000/-</i>
2	<i>Shri Baldev Shivabhai Patel At :Govindpura , Tal. Kadi, Mehsana</i>	<i>2,75,000/-</i>
3	<i>Shri Chetanbhai Babulal Patel Sat: Santej, Tal. Kalol</i>	<i>1,50,000/-</i>
	<i>TOTAL</i>	<i>7,00,000/-</i>

Therefore a show cause notice dated 17<sup>th</sup> March, 2016 was issued to the assessee to explain why not penalty u/s. 271D should be imposed for contravening the provision of section 269SS of the act. The assessee responded vide letter dated 14<sup>th</sup> March, 2014 briefly stating that he was a retired person and was working as an employee in the Gujarat State Road Transport Corporation Company during the year under consideration. He was a farmer and he was also deriving agricultural income. It was also stated that he had received funds from relatives as his relatives were uneducated farmers living in remote places. They were farmers and deriving income from agricultural activities and the aforesaid persons were

not having any tax liability which was chargeable to tax under the income tax act. The money was advanced to him on trusteeship basis and submitted that the money would be provided to them whenever demanded. The assessee has also submitted copies of extracts of the 7/12 of the above mentioned parties along with identity proof and confirmations of such parties that they had given funds to the assessee and the assessee was liable to return the same to them. The JCIT was not satisfied with the submission of the assessee and levied penalty of Rs. 7 lacs equivalent to the deposit amount u/s. 271D of the act.

5. The assessee has preferred appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the assessing officer.

6. During the course of appellate proceedings before us, the Id. counsel has submitted paper book comprising detail of submission made before the lower authorities. It is contended that assessee is a retired employee of Gujarat State Road Transport Corporation and was not carrying out any business activity and the impugned amount was received amount from the family relatives who were living in remote areas and they were not having any access of banking facility in their areas. They had kept the money with the assessee on trusteeship basis. He has also placed reliance on the decision of Gaurng Chandra Nayak Vs. JCIT vide ITA No. 369/CTK/2018 dated 23-09-2019. On the other hand, Id. departmental representative has supported the order of Id. CIT(A).

7. We have heard both the sides and perused the material on record. The assessment u/s. 143(3) r.w.s. 147 of the act was completed on 29<sup>th</sup> Feb, 2016 determining total income at Rs. 2,05,860/- as shown in the return of income by the assessee. Since the assessee had accepted the cash loan exceeding of Rs. 20,000/- from three persons during the year, therefore, the assessing officer had levied penalty of Rs. 7 lacs equivalent to the amount of deposit received. The assessee explained that he was a retired employee of the GSRTC and had received these funds from his relatives who lived in remote areas and were not aware of banking operations. The assessee was not carrying any business activity. During the course of assessment, the assessee has filed the extract of 7/12 of the relatives of the assessee, confirmation of the relatives towards genuineness of the transaction. It was also submitted that relatives of the assessee were engaged in agricultural activities and their source of income was only from agricultural activities. The income of the relatives of the assessee were below the basic exemption limit which was not chargeable to tax. They were living in a remote area of Ludol Govindpura of Mehsana District and banking facilities were not available in that area. The genuineness of the deposit was not disputed by the assessing officer. In the light of the above facts and circumstances, we observe that assessing officer has not controverted the claim of the assessee by not making any verification and examination of the persons from whom the assessee has obtained the above cash deposit under the specific circumstances as elaborated in this order. In view of the above, we consider that there was bonafide reason for accepting such deposits from the three persons under the circumstances as narrated above, therefore, the decision of

the ld. CIT(A) is not justified. Accordingly, the penalty levied u/s. 271D is deleted. This appeal of the assessee is allowed.

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8. The solitary ground of appeal is against the decision of ld. CIT(A) in confirming the action of the assessing officer in levying the penalty amounting to Rs. 16,671/- u/s. 271(1)(c).

9. The fact in brief is that assessee has not filed his return of income . Therefore, assessment has been completed u/s. 143(3) r.w.s. 147 of the act on 29<sup>th</sup> Jan, 2016 determining total income at Rs. 2,05,680/-. The assessing officer has also initiated penalty proceedings u/s. 271(1)(c) for concealment of income and not filing of return of income. During the course of penalty proceedings, the assessee has not made any compliance to the show cause notices therefore the assessing officer has levied minimum penalty of Rs. 16,671/- as per provision of section 271(1)(c) of the act @ 100% of the tax sought to be evaded

10. The assessee has filed appeal before the ld. CIT(A) . The ld. CIT(A) has dismissed the appeal of the assessee.

11. We have heard the rival contentions and perused the material on record. In this case, the assessment was completed u/s. 143(3) r.w.s. 147 of the act as the assessee had deposited cash amounting to Rs. 28,27,630/- into his bank account but not filed return of income for the year under consideration. The assessing officer noticed that assessee was having

taxable income and not filed return of income. The assessee had incorrectly submitted that he was having only agricultural income which was not taxable, however, the assessing officer noticed that assessee had also earned non-agricultural income in the form of salary on which no tax was paid by filing return of income. Considering the aforesaid facts and circumstances, we do not find any reason to interfere in the action of the Id. CIT(A) in sustaining the penalty levied by the assessing officer u/s. 271(1)(c) of the act. Therefore, this appeal of the assessee is dismissed.

12. In the result, appeal ITA 783/Ahd/2018 is allowed and appeal ITA 782/Ahd/2018 is dismissed.

Order pronounced in the open court on 28-01-2020

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 28/01/2020**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
अहमदाबाद