

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 743/JP/2017
निर्धारण वर्ष / Assessment Year: 2014-15

Mohanlal Sobhagmal, C/o- M/s B.M. Vyas & Company, Chartered Accountants, Royal Talkies Building, Beawar-305901.	बनाम Vs.	J.C.I.T., Range-2, Ajmer.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AABFM 3809 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing: 19/02/2020
उदघोषणा की तारीख / Date of Pronouncement : 20/02/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 02/08/2017 for the A.Y. 2014-15 in the matter of imposition of penalty U/s 271E of the Income Tax Act, 1961 (in short, the Act) amounting to Rs. 7,98,338/-.

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee firm derives income from Purchase & Sale of Cotton Bales, Cotton Cloth, apart from deriving income from Commission. The

assessee filed return of income on dated 28.10.2014 declaring income of Rs.10,60,530/-. However, the assessment was completed vide order dated 29.11.2016 u/s 143(3) at assessed income of Rs.10,89,810/-. While completing assessment U/s 143(3) of the Act, the A.O. noticed that the assessee has allegedly repaid some loans exceeding Rs.20,000/- to the cash creditors during the year under consideration, which is in contravention of provisions of S. 269T of the Act. Thereafter, he referred the matter to the JCIT on 31.1.2017 vide letter dated 1872, who issued a show cause dated on 15.02.2017 for imposing penalty u/s 271E, in response to which assessee filed reply dated 28.02.2017 on 01.03.2017. The crux of the reply was that all those accounts are running account and the person to whom the loans were repaid were close relatives of the partners of the assessee firm. Payments were made on urgent basis as being required for treatment of Smt. Umrao Kanwar Lunawat, who is mother of partner Shri Sampat Raj Lunawat at Ahmedabad. However, rejecting explanation of the assessee, he imposed penalty u/s 271E of Rs.7,98,338/-.

3. By the impugned order, the Id. CIT(A) confirmed the action of the A.O. against which the assessee is in further appeal before the ITAT.

4. It was argued by the Id AR of the assessee that Sec. 269T cannot be invoked unless the department establish that what the assessee repaid was a loan or deposit. The subjected payments in the case of M/s Noratmal Lunawat HUF Rs.55,000/-. Nirmala Kumari Lunawat (Wife) Rs.41,500/- and Umrao Kanwar Lunawat (Mother) Rs.20,000/- , Amit Kumar Lunawat (Son) Rs.85,000/-, Vinit Kumar Lunawat (Son) Rs.30,000/-, Sunita Lunawat (Daughter in Law) Rs.1,00,000/- totalling to Rs.3,31,500/- were required in an emergency need of treatment of Smt. Umrao Kanwar Lunawat, who is mother of partner Shri Sampat Raj Lunawat at Ahmedabad [which fact is not denied neither by the JCIT nor by the Id. CIT(A)] and as a usual practice of common man, it was arranged from the family members i.e. Wife, Sons, Daughter in Law and his HUF. It was also argued that in case of Chand Kanwar Lunawat Rs. 4,23,705/-, Rajendra Kumar Lunawat Rs. 20,000/- and Mamta Lunawat Rs.23,133/- totalling to Rs.4,66,838/-were required in an emergency need of treatment of Smt. Chand Kanwar Lunawat, who is heart patient and aged 76 years (mother of partner Shri Mahendra Lunawat) and ultimately expired on 07.03.2015 [which fact is not denied neither by the JCIT nor by the Id. CIT(A)]
5. On the other hand, the Id DR has relied on the orders passed by the lower authorities.

6. I have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the purpose behind the withdrawals was emergency need of medical treatments of those ladies who are having running account with the firm and the firm received/paid the amount when needed. The very nature of these transactions clearly suggest that it was a merely family accommodation at the time of need. It was not paid to the stranger/ outsider and thus, was not in the nature of loan or deposit. The assessee had running account with all these relatives as stated by the A.O. frequent repayment with no fixed period of odd amount shows no loan. Furthermore, it is not denied that the subjected amounts were paid to the blood/close relatives of the assessee who cannot be termed as a ban in the strict legal sense of the term. The various Benches of the ITAT have been consistently, taking a view that any amount paid to the close relative cannot be treated as a loan or deposit. There is no "Transfer" as such between two closely related persons, which is a condition precedent, so as to validly invoke sec. 269SS or 269 for that reason.

7. In the case of Krishna Kr. Pathak (HUF) vs. ITO (2004) 90 TTJ 0940 (Kol Trib), the Tribunal have held as under:

"The assessee (HUF) and the Karta of the assessee (HUF) were maintaining current account with each other and the transactions between them were in the nature of temporary adjustment/accommodation and there was no cash loan or deposit by the Karta of the assessee (HUF). The Department has not disputed the submission of the assessee (HUF) that no interest was paid or payable or received by either side. By passing the journal entry by the Karta of the assessee (HUF) on account of expenditure incurred by him for giving gifts to relatives on behalf of the assessee (HUF) does not amount to loan or deposit within the meaning of s. 269SS and as such, no penalty is leviable under s. 271D. Accordingly, the penalty is cancelled.—Shrepak Enterprises vs. Dy. CIT (1998) 60 TJJ (Ahd) 199: (1998) 64 ITD 300 (Ahd), Muthoot M. George Bankers vs. Asstt. CIT (1993) 47 TJJ (Coch) 434: (1993) 46 ITD 10 (Coch), Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) 80 ITD 484 (Hyd) and Sun Flower Builders (P) Ltd. vs. Dy. CIT (1997) 61 ITD 227 (Pune) relied on."

8. It is pertinent to note that no addition u/s 69 or other provision, was made in the assessment order 29.11.2016 though framed u/s 143(3) meaning thereby the subjected transactions were treated as genuine transaction, which are not intended to be covered. There is absolutely no doubt raised, in any of the orders by lower authorities that the money involved was black money. In the case of CIT vs. Maheshwari Nirman Udyog (2007) 211 CTR 0579 (Raj.), the Hon'ble Court has held as under:

"Appellate authority as well as the Tribunal having found that the transaction in question is a genuine transaction and that the assessee has shown reasonable course for accepting loan in cash in violation of s. 269SS, such finding of fact cannot be disturbed

by the Court and no substantial question of law arises for determination."

Moreover, the provision of 269T and 269SS has been enacted in order to prevent the increase in black money and to stop tax evasion. The intention of the legislature was not to cover the bonafide and genuine transaction wherein the AO himself was satisfied and no tax evasion/use of the black money was involved.

9. I also observe that a genuine transaction made in an emergency, does not attract penalty u/s 271E of the Act. It has been held that the amount paid by the assessee in cash to meet with his urgent need of money, was a reasonable cause in terms of Sec 273B. The funds were needed for an urgent requirement made at the hospital at Ahmedabad towards the treatment of mother. The assessee therefore, paid the amount through different family members, who are close relative of the partners of the firm Shri Sampatraj Lunawat and Shri Mahendra Lunawat to meet with urgent need of medical treatment expenditure in emergency and hence does not attract penalty.

10. Similar issue has been decided by the Coordinate Bench in the case of Shri Subhash Chand Nyati Vs ACIT In ITA No. 01/JP/2018 wherein it was held as under vide para-7

"3. I have heard the rival contentions and carefully gone through the orders of the authorities below. From the record, I found that there are two partners in M/s Rambilas Shiv Kumar Kumar viz Om Prakash Nyati and Ram Bilas Nyati. The assessee Subhash Chand Nyati is brother of Om Prakash Nyati and son of Ram Bilas Nyati. That the family is a joint family and both brothers and father are living together. That family's household expenses incurred are debited equally to assessee, assessee's brother Om Prakashji Nyati and assessee's father Shri Rambilasji Nyati in the books of M/s Rambilas Shiv Kumar.

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7. The Coordinate Bench of ITAT Ahmedabad in the case of ACTT vs Gujarat Ambuja Proteins Ltd. (89 TTJ 324) has held that where account of sister concern was credited by the assessee by journal entries on account of payment made by sister concern on behalf of the assessee, there was no violation of the provisions of Section 269SS of the Act. Moreover, the transaction between the assessee and sister concern M/s Ram Bilas Shiv Kumar was current account in nature and was not a loan or deposit and hence there is no violation of section 269SS as held by the Hon'ble High Court of Madras in the case of CIT vs Idhayam Publication Ltd. (285 1TR 221) Copy of account of the assessee in the books of sister concern M/s Rambilas Shivkumar clear indicate that it is a current account and as such provisions of Section 269SS/ 271D are not applicable.
8. In view of the above, I do not find any justification in the penalty imposed U/s 271D of the Act. The A.O. is directed to delete the same."

11. In view of the above facts and circumstances, I do not find any justification for the penalty so imposed U/s 271E of the Act. Accordingly, I direct the A.O. to delete the same.

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

Order pronounced in the open court on 20th February, 2020.

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-20/02/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Mohanlal Sobhagmal, Beawar.
2. प्रत्यर्थी / The Respondent- The J.C.I.T., Range-2, Ajmer.
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. 743/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar