

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD]**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 613/Ahd/2017
(Assessment Year: 2012-13)

M/s. B. P. Patel and Co. Dist. Dasharath, Baroda- 391740	Vs.	ITO Ward-1(2)(1), Baroda
[PAN No. AAB FB1 000 G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. J. Shah, AR
Respondent by :	Shri Lalit P. Jain, Sr. D.R.

Date of Hearing	31.08.2020
Date of Pronouncement	13.10.2020

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal is directed against the order dated 05.12.2016 passed by the Commissioner of Income Tax(Appeals) – 2, Vadodara arising out of the penalty order dated 29.10.2015 passed by the JCIT, Range-1(2), Vadodara under section 271E of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2012-13.

2. When the matter was called out for hearing the Ld. AR for the assessee at the outset submitted that the controversy in the present case revolves around imposition of penalty of Rs. 9,79,104/- under Section 271E of the Act for alleged breach of provisions of Sec. 269T of the Act. Adverting to the facts, the Ld. AR for the assessee submitted that the

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assessment under Section 143(3) dated 20.02.2015 was carried out in the instant case without any additions. Thereafter impugned penalty order under Section 271E dated 29.10.2015 was passed by the competent authority namely Joint Commissioner of Income Tax (JCIT) whereby it is alleged that assessee has paid an aggregate sum of Rs. 8,77,252/- in contravention of provisions of Sec. 269T to four persons as named in the penalty order. While imposing penalty under Section 271E, it was observed that the assessee repaid outstanding loans in cash which is prohibited in law and consequently such action invites penal action under Section 271E of the Act. In this back drop, the Ld. AR for the assessee raised legal objection as well as objection on merits. Adverting to the legal objection, the Ld. AR referred to the assessment order and pointed out that there is no mention of initiation of penalty under Section 271E for alleged contravention of Sec. 269T of the Act. He thereafter referred to the decision of Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala City [2015] 379 ITR 521(SC) for the proposition that it is incumbent upon the AO to form 'satisfaction' in the assessment order for levy of penalty under Section 271E of the Act. It was also submitted that the proposition laid down by the Hon'ble Supreme Court has been followed by the Tribunal in ITA 3109/Ahd/2015, in the order dated 21.03.2017 in the case of Prithvi Singh Poonia vs. JCIT. The Ld. AR thus submitted that in the absence of any 'satisfaction' recorded by the AO, the notice for imposition of penalty could not be issued and the entire proceedings by the department towards imposition of penalty is void *ab initio* at the threshold and thus bad in law.

2.1 Adverting to the merit of the case, the Ld. AR referred to the ledger account of the four parties and pointed out that the outstanding for these parties are being carried forward from the earlier years on account of purchase of tobacco products from the partnership firm in which these parties are having substantial interest. The Ld. AR submitted that part of the payment was made in the earlier years where as the remainder amount in question was paid in cash during the year. It was, thus, contended that the payment so made was on account of discharge of liabilities towards purchase in the earlier years which cannot be branded as loan and/or deposits contemplated under Section 269T of the Act. In a rejoinder to the argument on behalf of the Revenue, the Ld. AR mentioned that although the outstanding liability was shown under the 'head loans' in the balance sheet, such declaration by itself cannot be taken as sacrosanct and true character of transaction has to be determined from facts instead of nomenclature assigned. The Ld. AR accordingly urged for deletion of penalty both on law as well as on merits.

3. The Ld. DR, on the other hand, strongly relied upon the order of the lower authorities. Adverting to the legal objection raised on behalf of the assessee, the Ld. DR contended that the legal arguments put forth on behalf of the assessee is intrinsically opposed to the scheme of the Act. The Ld. DR referred to the provision of Sec. 271 (1B) of the Act and submitted that the law requires the 'satisfaction' of the AO in the course of the assessment proceeding is only with reference to the initiation of penalty proceeding under Section 271(1)(c) of the Act. It was submitted that provisions of Sec. 271E is totally different in its nature and spirit and has no connection with

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the assessment proceedings *per se*. It was submitted that the imposition of penalty under Section 271E is not dependent upon the assessment under Section 143(3) at the first instance. Secondly, as per sub-Section (2) of Sec. 271E, the penalty can be imposed only by a senior officer in the rank of Joint Commissioner. The AO below the rank of Joint Commissioner, thus, has no *locus standi* to form his 'satisfaction' for imposition of penalty even in the course of assessment as this is not within the domain of that AO to decide. Thus, the AO, in the instant case, in the rank of ITO could not have formulated any 'satisfaction', even if, he so desired while framing the assessment order. Such order could have been contrary to the very scheme of the Act. The Ld. DR thereafter pointed out that, in any case, an 'Office Note' was prepared recommending the Joint Commissioner with a proposal to consider the imposition of penalty under Section 271E of the Act for alleged default as observed by him. Therefore, such 'Office Note' would prove that the satisfaction contemplated by the Hon'ble Supreme Court and the Co-ordinate Bench relied upon on behalf of the assessee was actually present in this case. It was thus, contended that legal objection raised by the assessee for penalty order under Section 271E being bad in law for want of satisfaction has no leg to stand.

As regards merits, the Ld. DR strongly harped that the assessee is mainly privy to the fact whether it was a 'loan' or 'deposit'. The assessee has himself declared the same as 'loan' in its books of accounts and, therefore, the onus cannot be shifted on the Revenue on this score. It was thereafter submitted that the purchase transactions referred to the earlier year has not been scrutinized by the department. This apart, there is no

proof for such purchases made in the earlier years. It was thus contended that there is no justification in the arguments of the assessee that the transaction has been accepted in the past. It was thus contended that the doctrine of *res judicata* would thus not apply.

4. We have carefully considered the rival submissions. The imposition of penalty under Section 271E is in question. We shall first address to the legal objection raised by the assessee as narrated in the preceding paragraph. The decision of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala City proceeds on the premise that no 'satisfaction' has been recorded by the AO in that case. In the instant case, the AO being ITO and inferior to the Joint Commissioner is claimed to have forwarded an 'Office Note' to the Joint Commissioner for action with reference to the provisions of Sec. 269T and r.w.s. 271E of the Act. It is elementary to say that the 'satisfaction' can only be formed by the person who is competent to impose penalty and not a lower ranking authority. The law provides for imposition of penalty by an officer of the rank of the Joint Commissioner. Thus, the AO is statutorily debarred for forming any 'satisfaction' either at the time of assessment order or subsequent thereto. The AO, however, has sent the Office Note to the competent authority for requisite action. Thus, the assent of mind of AO is discernible from such conduct. Hence, the ratio of decision of the Hon'ble Supreme Court would not apply to the facts of the case. Thus, we find considerable merit in all the plea raised on behalf of the Revenue in this regard as noted in paragraph 3 hereinabove. We, thus, see no merit in the legal objection raised by the assessee.

5. We now come to the merits. The assessee has narrated the circumstances in relation to the cash payments to four parties. The assessee has attempted to demonstrate from the ledger account that the outstanding has been carried forward from the earlier years and a part payment was also made in the preceding years as a measure of discharge of liability arising from purchase of tobacco products. The similar payment in cash has been made in the earlier year which has not been disputed by the Revenue. The presumption of bona fide & good faith would, thus, arise in favour of the assessee. Mere nomenclature in a particular manner in a balance sheet will not be conclusive for determination of nature of transaction. The stand of the assessee towards purchase of tobacco is consistent and emanating from the orders of the lower authorities. We, thus, are inclined to appreciate the stand of the assessee in affirmative on merits. Consequently, on merits, the case of the assessee deserves to be accepted. Hence, the penalty imposed under Section 271E by the competent authority (JCIT) is set-aside and quashed.

6. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on	13/10/2020
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Sd/-
(PRADIP KUAMR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 13/10/2020
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad