

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

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT
AND SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA.Nos.189 & 190/NAG/2015
Assessment year:2009-10

M/s.Shree Vinayak Travels, 1 st Floor, Rohera Comple, Ajni Chowk, Wardha Road, Nagpur – 440 015. PAN:ABMFS3553P (Appellant)	Vs.	J.C.I.T, Range-1, Nagpur. (Respondent)
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Appellant by	Shri J.M.Ranade
Respondent by	Shri Milind Bhusari, D.R.
Date of hearing	20/11/2017
Date of pronouncement	21/11/2017



ORDER

PER P. K. BANSAL, V.P.

Both these appeals have been filed by the assessee against the respective orders of the CIT(A) both dated 27.02.2015 by which the CIT(A) has confirmed the penalty levied by the Assessing Officer u/s.271E of the Act amounting to Rs.17,00,000/- and u/s.271D of the Act amounting to Rs.18,10,000/-.

2. Aggrieved by the order of the CIT(A), the assessee has come before us, challenging the sustenance of the penalty levied u/s.271E and 271D of the Act respectively.



3. At the outset, in respect of both the penalty order, the Id.AR before us, contended that both the penalties levied by the Id.JCIT is barred by limitation as provided u/s.275(1)(c) of the Income Tax Act. It was contended that both the penalties were initiated by the Assessing Officer vide notice issued under each of the section dated 18.08.2011 and accordingly, the penalty must have been levied by the JCIT by 31.03.2012. While, in fact, each of the penalty order has been passed by the Additional Commissioner on 19.10.2012.

3.1 When a query was raised by the Bench, the Id.AR was firm enough to state that the Addl.CIT initiated the penalty on 18.04.2012 under each of the section. But, he contended that the penalty has been initiated by the Assessing Officer vide notice dated 18.08.2011. Therefore, as per the provision of section 271(1)(c) of the Act, the penalty order passed on 19.10.2012 is beyond six months and therefore void ab-initio.

4. In this regard, Id.AR relied on the order of Rajasthan High Court in the case of CIT vs. Hissaria Brothers. The Id.DR, on the other hand, vehemently contended that the penalty has to be initiated by the authority who is competent to levy the penalty. Therefore, initiation of the penalty by the Assessing Officer does not have any leg to stand.

5. We have heard the rival submissions and carefully considered the same along with the order of the Tax Authorities below, we noted that under the provision of 271E and 271D of the Act, penalty now has to be levied only by the Joint Commissioner of Income Tax(JCIT). The penalty u/s.271E or 271D of the Act cannot be levied by any officer below the rank of the JCIT. Therefore, the penalty notice issued by the Assessing Officer u/s.271E or 271D are invalid and void ab-initio.





6. This is a fact that in each of the case the penalty notice has been issued by the JCIT on 18.04.2012 and ultimately JCIT has levied the penalty vide order dated 19.10.2012 u/s. 271(1)(c) of the Act. The penalty has to be levied within the six months or after the expiry of the financial year in which the proceedings in the course of which action for the imposition of the penalty has been initiated are completed, whichever period expires later. Six months from the end of the month in which there is a valid initiation of the penalty. But the penalty has been levied by the Joint/Additional Commissioner vide order dated 19.10.2012.

6.1 Therefore, in our view, penalty has been levied within the permissible time and the penalty order is not beyond limitation. We have gone through the order of Rajasthan High Court in the case of CIT vs. Jitendra Singh Rathore 31 taxmann.com 52 on which the Id.AR has vehemently relied. We noted from para 4 of the order of the High Court that in that case penalty has been initiated and levied by the Assessing Officer i.e. penalty has been initiated by the same officer who has levied the penalty. Therefore, this decision will not assist the assessee.

7. We, therefore, dismiss the plea of the assessee in both the penalty orders that the penalty is barred by the limitation.

8. The second submission made by the Id.AR in both the appeals is that no penalty should be levied on the concerns making and receiving the payment in cash from sister concerns. And, in this regard, he relied on the decision of the Bangalore Bench of this Tribunal in the case of Canara Housing Development Company vs. Additional Commissioner of Income Tax(ACIT) 127 TTJ 446. The Id. DR, on the other hand, vehemently contended that in this case the assessee is M/s.Shree Vinayak





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Travels, while the other party from whom the cash has been received and to whom the cash has been paid by way of Loan or Advance is M/s.Sarvasiddhanta Educational Society(SES). Assessee is a partnership firm while the other concern is a non-profit organization and therefore, cannot be regarded to be his sister concern.

9. After hearing the rival submissions and going through the order of this Bench of the Tribunal in the case of Canara Housing Development Company(supra), we are of the view that, this decision will not assist the assessee as a non-profit making organization is always created for the benefit of the public at large while a profit making organization is created for the benefit of the persons owned that organization. Therefore, both the concerns cannot be regarded to be sister concern, although the partners of the firm may be the trustee or the official bearers of the committee of Sarvasiddhanta Educational Society(SES).

9.1 It is not denied that SES has been created for non-profit purposes and for the charitable purpose as defined u/s.2(15) of the Income Tax Act. In view of this fact, we dismiss this plea taken by the Id.AR.

10. The Id.AR before us, further, submitted that the Assessing Officer has not appreciated the facts correctly. The assessee firm was established only on 01.08.2008 and for this, our attention was drawn to page 17 of the paper book. Therefore, prior to that date, there has been no Advance or Loan in cash received or made between both the parties.

11. Our attention was drawn towards page no. 28 and 29 of the paper book and on that basis, it was contended that it is only a sum of rupees were paid advance by the assessee of Rs.5,07,250/- to SES in cash. Similarly, the assessee has also received only a sum of Rs.4,60,000/- in





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cash. Therefore, if any default has been made by the assessee that is only in the sum of Rs.5,07,250/- u/s.269SS of the Act and Rs.4,60,000/- u/s.269T. For the sum of Rs.1,10,000/-, it was submitted that these payments has been received from six parties for which the details have been given from page 30 to 37. On that basis, it was contended that there is no violation u/s.269SS as the cash advanced by each of the parties does not exceed Rs.20,000/- in each case. On an enquiry from the bench, whether, there was any reasonable cause, the Id.AR did not give any reason which compelled the assessee to advance the Loan / Advance in cash or receive the Loan or Advance in cash.

12. The Id.DR, on the other hand, relied on the order of the Tax Authorities below and contended that it is a clear cut case of 'violation of provisions of section 269SS and 269T of the Act'.

13. We have heard the rival submissions and carefully considered the same along with the orders of the Tax Authorities below. We noted that the penalty u/s.271E of the Act had to be levied if a person re-paid any Loan or Deposit referred to u/s.269T of the Income Tax Act, otherwise, than in accordance with the provisions of that section for the sum equal to the amount of the Loan or Deposit or specified advance so paid.

14. Section 269E debars an assessee stated therein to repay any Loan or Deposit made with it, otherwise, than by account payee or account payee draft drawn in the name of the person who has made the Loan or Deposit, if the amount is Rs.20,000/- or more. Similarly, u/s.271D of the Act, penalty has to be levied on a person who has taken any Loan or Deposit in contravention of the provision of section 269SS of the Act for a sum equal to the amount of Loan or Deposit so taken or accepted.





Section 269SS of the Act debars an assessee specified in that section to accept any Loan or Deposit or any specified sum, otherwise, then by the account payee cheque or account payee bank draft.

14.1 It is not denied that assessee has made the default under both the provisions of section 269SS and 269T of the Act, therefore, falls within the purview of the provision of section 271E and 271D of the Act respectively.

15. No doubt, levy of the penalty u/s.271D and 271E of the Act is subject to the provision u/s.273B of the Act. For that onus is on the assessee to prove that the failure referred to section 269SS and 269T of the Act was for a reasonable cause.



16. The Id.AR before us, has not shown any reasonable cause for such failure. No such evidence has been brought to our knowledge which proves that there was a failure on the part of the assessee. We noted that the Assessing Officer has levied the penalty amounting to Rs.17,00,000/- u/s.271E and u/s.270D of the Act amounting to Rs.18,10,000/-. But, this is also a fact that the assessee firm was established on 01.08.2008 and prior to that if the firm has not been established prior to 01.08.2008, there is no question that the firm would have received the Loan or Advance or Advanced the Loan or Deposit prior to that date. From page 28 to 29 of the paper book, it is apparent that the assessee has given Loan or Deposit to the extent of Rs.5,07,250/- in cash to SES. Similarly, the assessee has received a sum of Rs.4,60,000/- in cash by way of Loan or Deposit from SES. Thus, there was a default committed by the assessee u/s.269SS and 269T of the Act, only to that extent.

17. We, therefore, confirm the penalty u/s.269D of the Act to the extent of Rs.4,60,000/- and u/s.269E of the Act to the extent of Rs.5,07,250/-. Thus, both the appeals filed by the assessee are partly allowed.

18. In the result, both the appeals filed by the assessee are partly allowed.

(Order pronounced in the open court during the course of hearing)



Sd/.
(PAWAN SINGH)
Judicial Member

Sd/.
(P. K. BANSAL)
Vice President

Dated: 21/11/2017
S.Gangadhara Rao, Sr.PS

Copy of the order forwarded to :

1. The Appellant ~~M/s Shree Vinayak Travels, Nagpur~~
 2. The Respondent.
 3. Concerned CIT
 4. The CIT(A)
 5. D.R.,
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