

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**ITA No.205/SRT/2017 (AY 2008-09)**  
(Hearing in Virtual Court)

The Assistant Commissioner of Income Tax, Valsad Circle, Valsad.	Vs	Pramukh Infrastructure, C/o. Shri Bipinchandra B. Patel, Pramukh Prasad, N.H.No.8, Link Road, Dungri, Valsad. PAN: AAIFP 6738 J
Appellant		Respondent

Assessee by	Shri P.M.Jagasheth – CA
Revenue by	Ms. Anupama Singla – Sr.DR
Date of hearing	30/12/2021
Date of pronouncement	30/12/2021

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income Tax (Appeals-4), Surat dated 14.08.2017 for the Assessment Year (A.Y.) 2008-09. Initially this appeal was adjudicated and dismissed vide order dated 23.08.2019 due to Low Tax Affect. However, the order dated 23.08.2019 was recalled on filing Miscellaneous Application(M.A.) by the Revenue in M.A.No.31/SRT/2020 in order dated 08.04.2021. Accordingly, this appeal came up for hearing afresh. The Revenue raised the following grounds of appeal:

- “i) On the facts and in circumstances of the case, the order of the CIT(a) is perverse in law as the CIT(A) has not considered the fact that a firm and its partners are separate entities for the purposes of Sec 269SS & Sec 271D of the Act and the same has been held in the decision of Hon’ble High Court Kerala in the case of Grihalakshmi Vision vs Additional Commissioner of Income Tax, Range I, Kozhikode – 2015, 63 Taxmann 196 (Kerala).*
- ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty levied by the AO u/s 271D of the Act amounting to Rs.75,00,000/- for violation of provisions of Sec 269SS of the Act by the assessee.*

- iii) *On the facts and in circumstances of the case and in law, the Ld. CIT(A) has ignored the fact that the loan amount of Rs.75,00,000/- was not recorded in the regular books of accounts maintained by the firm and the partners and the above fact came to the notice of the department consequential to the search operation conducted u/s 132 of the I.T.Act, 1961.*
- iv) *The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.”*

2. Brief facts of the case are that assessee is a partnership firm and engaged in the business of development of land. A search action under section 132 of the Act was carried out on assessee group on 05.11.2012. Consequent upon search notice under section 153A of the Act was served on the assessee for filing return for the year under consideration. In response to notice under section 153A of the Act, the assessee filed return of income on 02.09.2013 declaring income of Rs.4,17,540/-. No additional income was offered in the return of income, filed in response to notice under section 153A. The assessment was completed under section 143(3) rws153A on 07.02.2015, in accepting return of income. Subsequently, the Joint Commissioner of Income Tax (ld.JCIT) levied penalty under section 271D of the Act. The ld.JCIT while passing the penalty order recorded that assessee firm received loan of Rs.75 lakhs in cash from one of its partner namely Dayaswarup J.Patel, and repayment and interest of such loan was made in subsequent year. The assessee has not shown the said transaction in its books of accounts. The ld.JCIT of the view that the assessee has violated the provision of section 269SS of the Act, which attracts penalty under section 271D

of the Act. The Id.JCIT issued notice under section 274 r.w.s 271D dated 08.09.2016. The assessee filed its reply dated 19.09.2016 wherein it was contended that the firm has neither received, nor paid any amount in cash to Dayaswarup J.Patel /partner during the year under consideration. Accordingly, the provision of section 269SS are not attracted. The reply of assessee was not accepted. The AO noted that during the course of search action, some incriminating documents as per Annexure-BS-3 were found and seized, wherein details of cash loan and its recovery with interest were mentioned. The Id.JCIT on the basis of document was of the view that assessee firm has received a loan of Rs.75 lakhs in violation of provision of section 269SS of the Act and accordingly levied a penalty of equal amount i.e. Rs.75 lakhs vide order dated 30.09.2016.

3. On appeal before the Id. CIT(A), the entire penalty was deleted. The Id.CIT(A) while deleting the penalty held that section 269SS of the Act is not attracted in the transaction between partnership firm and its partner. The Id.CIT(A) also relied upon the decision of Ahmedabad Bench Tribunal in Hars Pravin K.Jain in ITA No.1817/AHD/2013 dated 15.02.2017 and Kolkata Tribunal in R.Jawl in ITA No.2425/Kol/2013. Aggrieved by the order of the Id.CIT(A), the Revenue has filed present appeal before this Tribunal.

4. We have heard the submission of ld. Senior Departmental Representative (ld. Sr. DR) for the Revenue and ld.Authorised Representative(ld.AR) for the assessee and have gone through the orders of the Lower Authorities carefully. The ld.Sr.DR for the Revenue submits that during the course of search action, certain incriminating material was found and seized. On the basis of seized material, it was proved that assessee firm has received loan in cash from one of its partners. The said transaction was in violation of section 269SS of the Act, which attract penalty under section 271D of the Act. The ld.JCIT levied penalty after giving fair and reasonable opportunity to the assessee. The ld.CIT(A) deleted the penalty by holding that transaction of loan and interest have not been proved and further no asset found or seized is sought to be explained by way of cash loan. The difference claim that loan is genuine and assessee disputes it. The ld.Sr.DR submits that firm and individual are separate entities and the loan was in violation of section 269SS of the Act.
5. On the other hand, the ld.AR of the assessee submits that consequent upon search action, a notice under section 153A of the Act was served upon the assessee. In response to notice under section 153A of the Act, the assessee filed its return of income on 02.09.2013. The return of income was accepted without any variation. The ld.AR of the assessee invited our attention on para 4, 5 and 6 of the assessment order and would submits that at the time of passing assessment

order no reference for initiating penalty under section 271D of the Act was made by the AO. The assessment order was passed with prior approval of Additional Commissioner of Income tax. At the time of passing the assessment order no reference was made to JCIT for levying penalty under section 271D of the Act. In absence of reference by AO is not valid. To support his submissions, the ld.AR of the assessee relied upon the decision of Hon'ble Apex Court in CIT vs Jal Laxmi Rice Mills [379 ITR 521] (2015) 64 taxmann.com 75 (SC).

6. In alternative submission, the ld.AR of the assessee further submits that provision of section 269SS of the Act are not attracted when money is exchanged inter-se between partner and partnership firm. It is settled legal position under law that firm is not a separate legal entity. All its rights and liabilities are vested in its partner. In taking or giving loan from partners in cash, no penalty under section 271D is leviable. To support his submission, the ld.AR relied upon the decision of Hon'ble Delhi High Court in CIT vs. Muthoot Financiers 371 ITR 408 Delhi [2015] 55 taxmann.com 202 (Del). Hon'ble Rajasthan High Court in CIT vs. Lokpat Film Exchange (Cinema) 304 ITR 179 (Raj), Hon'ble Madras High Court in CIT vs. V.Shiva Kumar [2013] 32 taxmann.com 62 Madras/354 ITR 9 (Mad) and decision of Surat Bench of Tribunal in The Nizar Taluka Khedut Sahakari Kharid Vechan Sangh Ltd., vs. JCIT in ITA No.3157/AHD/2015 dated 03.12.2019.

7. In other alternative submission, the ld.AR of the assessee submits that assessee firm was dissolved vide deed of resolution dated 01.04.2011 and the partnership came to an end. The dissolution of firm was informed to AO on 03.06.2011, the copy of acknowledgment of such receipt by Assessing Officer is placed on record. No penalty order against the dissolved firm/non-existent entity could be made. On merit, the ld.AR of the assessee submits that no addition on account of any loan in cash was made while passing the assessment order, therefore, no penalty is leviable.
8. We have considered the rival submission of the parties and have gone through the orders of Lower Authorities carefully. We find that a search action was carried out on the business premises of Pramukh Group of Valsad on 05.11.2012. Consequent upon search action, notice under section 153A of the Act was served upon the assessee to file return of income for A.Y.2008-09. In response to notice under section 153A, the assessee filed its return of income on 02.09.2013 declaring income of Rs.4,17,540/-. The assessment was completed on 17.02.2015 under section 143(3) of the Act r.w.s 153A of the Act. We find that the return of income was accepted without any variation. The assessment was passed with the prior approval of Addl. CIT. We further find that while passing the assessment order, no reference to the office of ld.JCIT, under section 271D for levying penalty was made by A.O.

9. Before us, the ld.AR of the assessee vehemently submitted that in absence of satisfaction regarding initiation was recorded, therefore, no penalty is leviable. To support his submission, the ld.AR relied on the decision of Hon'ble Apex Court in CIT vs. Jal Laxmi Rice Mills (supra). We find that Hon'ble Supreme Court in CIT vs. Jal Laxmi Rice Mills held that where no satisfaction was recorded for initiating penalty under section 271E of the Act, the impugned penalty order deserved to be set-aside. In our view, the ration of decision of Hon'ble Apex Court is squarely applicable on the facts of the present case. Therefore, the penalty order is liable to be set-aside.
10. We also find merit in the submission ld.AR of the assessee that no penalty under section 271D of the Act can be imposed on assessee firm in respect of transaction inter-se between the assessee and its partners for violation of section 269SS of the Act. The submission of ld.AR finds support from the decision of Hon'ble Rajasthan High Court in CIT vs. Lokpat Film Exchange (Cinema) 304 ITR 179 (Raj) (supra), Hon'ble Madras High Court in CIT vs. V.Shiva Kumar [2013] 32 taxmann.com 62 Madras/354 ITR 9 (Mad) (supra) and decision of Surat Bench of Tribunal in The Nizar Taluka Khedut Sahakari Kharid Vechan Sangh Ltd., vs. JCIT in ITA No.3157/AHD/2015(supra). In view of aforesaid factual and legal discussion, we do not find any merit in the grounds of appeal raised by the

Revenue, accordingly, we affirm the order of Ld. CIT(A) on our aforesaid observation as well.

11. Considering the fact that we have affirmed the order of Ld. CIT(A) on two primary submissions of ld.AR of the assessee, therefore, discussion on other alternative grounds of appeal submitted by ld.AR have become academic. In the result, the grounds of appeal raised by the Revenue is dismissed.

12. In the result, appeal of the Revenue is dismissed.

Order announced on 30<sup>th</sup> December, 2021 in open court and result was placed on the notice board.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat Dated: 30/12/2021 /SGR\*

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2. Respondent
3. CIT(A)
4. CIT
5. DR
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**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

Sr. Pvt. Secretary, ITAT, Surat