

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.90/DEL/2019 & 91/DEL/2019
Assessment Year 2011-12 & 2011-12

Mohit Singh L/H of Late Shri Balwant Singh, C/o Dalamwala Hotel and Banquet Hall, Near Safidon Road. Jind-126102	v.	Joint Commissioner of Income Tax SCO 22, Huda Complex, Bhiwani.
TAN/PAN: ATUPS0483Q		
(Appellant)		(Respondent)

Appellant by:	Shri R.R. Singhla, CA		
Respondent by:	Shri Bhopal Singh, Sr.DR		
Date of hearing:	17	03	2022
Date of pronouncement:	29	03	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed at the instance of the assessee against both the orders of the Commissioner of Income Tax (Appeals, Hisar ['CIT(A)' in short], dated 10.03.2018 arising from even orders dated 27.03.2014 passed by the Assessing Officer (AO) under Section 271E and 271D of the Income Tax Act, 1961 (the Act) concerning AYs 2010-11 and 2011-12, respectively.

2. The assessee has challenged the action of Assessing Officer towards imposition of penalty to Rs.2 lac levied under Section 271E on the ground that assessee has repaid loan of Rs.2 lac in cash during the year under consideration in violation of Section

269T of the Act.

3. When the matter was called for hearing, ld. counsel for the assessee submitted that the penalty under Section 271E in the hands of the deceased-assessee is not justified for the reason that allegations of Assessing Officer are not corroborated from the record. It was pointed out that the basis for imposition of penalty is 'loose paper no.98' impounded during the course of survey, copy of which is placed on record. It was pointed out that paper was hand written by somebody other than assessee as self evident from loose paper. The paper is neither signed by assessee nor acted upon. It is not known from whom the money has come nor the amount of Rs.2 lac is mentioned anywhere in the loose paper. It was further pointed out that the assessee has since died therefore such vague and nondescript document should not be used against the deceased assessee on the basis of suspicion and surmises. It was further pointed out that the Assessing Officer itself in paragraph no.7 of assessment order dated 27.03.2014 stated that no addition is required to be made towards cash loans in Assessment Year 2011-12 as the alleged amount was received in Assessment Year 2010-11. It was thus submitted that the action of the Joint Commissioner of Income Tax imposing penalty is marred with non application of mind. Consequently, the penalty is required to be struck down.

4. Ld. DR for the Revenue, on the other hand, relied upon the orders of the lower authorities and submitted that the loose papers found during the survey operation evidences the factum of repayment of loan in cash by the assessee which attracts the provisions of Section 269T and in turn Section 271E without any

further requirements in law. Ld. DR thus submitted that no interference with the order of the CIT(A) is called for.

5. We have carefully considered the rival submissions. As pointed out on behalf of the assessee, an assessment under Section 143(3) r.w. Section 147 was completed in the instant case, wherein the Assessing Officer has not observed any repayment of loan in cash as alleged in the penalty order. On perusal of the loose paper no.98, we find that no such amount of Rs.2 lac is borne out in the loose paper, insofar as Financial Year 2010-11 relevant to Assessment Year 2011-12 in question is concern. We also find traction in the plea of the assessee that the loose paper in the instant case are neither signed by the deceased-assessee nor prepared by him and also simultaneously vague and non-descript. The loose paper was purportedly prepared by some nephew of the assessee who was neither identified nor cross-examined. The loose paper no.98 also does not spell out as to with whom the alleged cash transactions as entered into the loose paper has been carried out, i.e., the corresponding party to the transaction is not known. The assessee is since deceased and thus the authenticity of the transaction cannot vouched. Under these mitigating circumstances, we find that plausible cause exists to question the propriety of allegations. The assessee thus deserves to be exonerated from the clutches of Section 269T r.w. Section 271E of the Act.

6. The order of the CIT(A) is accordingly set aside and the order of the Assessing Officer reversed. The penalty imposed under Section 271E stands cancelled.

7. In the result, the appeal of the assessee in ITA No.90/Del/2019 is allowed.

ITA No.91/Del/2019

8. The assessee has challenged the imposition of penalty of Rs.22,50,000/- allegedly received in cash by way of loans or deposits in contravention of Section 269SS r.w. Section 271D of the Act.

9. Ld. counsel for the assessee submitted that the basis of imposition of penalty under Section 271D is a 'loose paper marked page no.94' impounded in the course of survey from the business premises of the assessee. The Ld. Counsel thereafter adverted to the copy of loose paper no.94 and submitted that a bare reading of loose paper, if it were to be believed, would show that Rs.15 lac (page 94 of loose paper) was purportedly received 21 months back, i.e., somewhere in July, 2008 and does not concern the Assessment Year 2011-12 in question. Likewise, another sum of Rs.7,50,000 (page 98 of loose paper) is stated to be received on 12.09.2009 i.e. in the F.Y. 2009-10 relevant to A.Y. 2010-11. The assessment order framed under Section 143(3) r.w. Section 147 for AY 2011-12 is also silent on Rs.7.50 lakhs. It was next submitted that the assessee is since deceased, and therefore, in the absence of any signature from the assessee and in the absence of any particular of the person from whom the money was allegedly received etc., the document i.e., loose paper cannot be conceived more than a flippant or dumb document and thus cannot be relied upon for the purposes of. Ld. counsel thus urged for cancellation of penalty under Section 271D of the Act.

10. The Ld. DR relied on the action of revenue authorities.

11. We have carefully considered the rival submission. The

imposition of penalty under Section 271D for purportedly contravention of Section 269SS is in issue. It is alleged in the penalty order that the assessee has controverted the provisions of Section 269SS of the Act having raised cash loan of Rs.15 lakh and Rs.7.5 lakh in aggregate during the Assessment Year 2011-12 in question. In this regard, we observe that there was some figures of Rs.15 lac at page no.94 and figure of Rs.7,50,000/- at page 98 of the loose paper, which is basis for alleging violation of Section 269SS of the Act and income escaped assessment under Section 147 of the Act on the other hand. While recording the reasons for reopening of the assessment, it is noticed that, as per paragraph 7 of the assessment order under Section 143(3) r.w. Section 147 of the Act, the Assessing Officer himself has held that no addition is required to be made on the basis of document no.98 concerning Rs.7.50 lakhs as the loan was received by the assessee on 12.09.2009, i.e., in the Financial Year 2009-10. Thus, the imposition of penalty on alleged cash loan of Rs.7,50,000/- arising out of loose paper no.98 does not arise in Assessment Year 2011-12 in question.

11. Adverting to loose paper no.94 giving rise to imposition of penalty of Rs.15 lac, it is self-evident from the calculation of the interest shown in the loose paper that the alleged cash loan was not received in the Financial Year 2010-11 in question but the alleged cash loan relates back to Financial Year 2008-09 relevant to Assessment Year 2009-10. The calculation of interest vouches that the loan of Rs.15 lac in question was received about 21 month back, i.e., in July 2008, if such loose papers are to be believed at its face value. On this ground alone, the jurisdiction of the Revenue to imposition of penalty under Section 271D r.w. Section

296SS is ousted, insofar as Assessment Year 2011-12 in question is concerned. We therefore find *prima facie* merit in the plea on behalf of the assessee for its exoneration from the clutches of Section 271D of the Act.

12. Consequently, the order of CIT(A) is set aside and the Assessing Officer is directed to cancel the penalty.

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

Order pronounced in the open Court on 29/03/2022.

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: **29/03/2022**

Prabhat

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**