

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA Nos. 611 & 614/PUN/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Rajesh Vitthal Badade, Sr.No.184, Ganesh Peth, Pangul Ali, Pune 411 002 Maharashtra PAN : AKOPB7108C	Vs.	JCIT, Range-6, Pune
Appellant		Respondent

Assessee by Shri Bharat Shah
Revenue by Shri Suhas Dabade

Date of hearing 13-05-2022
Date of pronouncement 18-05-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee arise out of different orders passed by the CIT(A)-4, Pune on 26-02-2019 confirming the penalties imposed by the Assessing Officer (AO) u/s.271D and 271E of the Income-tax Act, 1961 (hereinafter also called 'the Act') amounting to Rs.12.00 lakh each in relation to the A.Y. 2014-15. Since both the appeals are based on similar facts, we are, therefore, proceeding to dispose them off by this common order.

2. Briefly stated, the facts of the case are that the assessee is a Tea and Coffee seller, who filed his return declaring total income

at Rs.2,61,930/-. During the course of assessment proceedings, the AO observed that the assessee had shown interest received on savings bank account amounting to Rs.990/-. As per ITS data, the assessee received interest on FDRs kept in Vishweshwara Bank at Rs.1,28,990/-. On being called upon to explain the position, the assessee submitted that he received interest of Rs.1,28,990/- on FDRs totalling to Rs.30,12,796/-. The excess amount of interest was on FDRs amounting to Rs.12.00 lakh, which was explained by the assessee through his letter, as reproduced in the assessment order, stating that he was negotiating for selling some agricultural plot at Mauje Lavi, Taluka Velha, District Pune to Mr. Sampat G. Mandhare and Mrs. Dropadabai Fakirrao Harpale and on that account he received Rs.5.00 lakh and Rs.7.00 lakh respectively from these two persons. The said amount of Rs.12.00 lakh was received as advance against the sale of property that was fixed deposited in the bank till the completion of the final sale deed. Since the sale did not fructify, the amount was withdrawn from the FDR account and returned. The AO made the addition of interest earned on Fixed Deposit by accepting the receipt of loan and its repayment to the two persons. During the course of the penalty proceedings, the AO recorded statement of these two persons who

deposed to have paid Rs.5.00 lakh and Rs.7.00 lakh respectively to the assessee towards an agreement for purchase of land. Not convinced, the AO levied penalty of Rs.12.00 lakh u/s 271D of the Act for receipt of loan in violation of section 269SS of the Act and u/s 271E of the Act for repayment of loans Rs.12.00 lakh in cash in violation of section 269T of the Act. The Id. CIT(A) affirmed both the penalties. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. Having heard the rival submissions and gone through the relevant material on record, it is found as an admitted position that the AO recorded statement of Mr. Sampat G. Mandhare and Mrs. Dropadabai Fakirrao Harpale, who had given sum of Rs.5.00 lakh and Rs.7.00 lakh respectively to the assessee as advance for purchase of the land. Here it is relevant to mention that the AO accepted in the assessment that the amounts were received and repaid by the assessee from these two persons, which is fortified by the fact that he did not make any addition towards the source of the deposit of FDRs in the assessment. Both of them appeared before the AO and admitted to have entered into an agreement with the assessee for purchase of his land and the amounts were given as advance for purchase of the land. Ultimately, the transaction did

not go through and the assessee had to withdraw the amount from the bank for repaying the sums to these two persons. On the above analysis of the facts, it clearly emerges that the amount received by the assessee in cash was in the nature of receipt of advance for sale of land and not receipt of any loan violating the mandate of sections 269SS. Similar is the position *qua* the repayment of advances not attracting the mischief of section 269T of the Act. In that view of the matter, there can be no question of imposing or confirming any penalty on receipt of advance and its repayment against sale of property under the concerned sections.

4. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 18th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 18th May, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	13-05-2022	Sr.PS
2.	Draft placed before author	18-05-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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