

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE
BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1514/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

The Income Tax Officer,
Ward 2(4), Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Odhekar Bandhu Saraf Javheri
963, Sarkar Wada, Saraf Bazar,
Nashik - 422001

PAN: AAAFO7580K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Milind Joshi
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 11-07-2022
घोषणा की तारीख / Date of Pronouncement : 19-07-2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Ld. Commissioner of Income Tax (Appeals)-2, Nashik, dated 04.07.2018 deleting the penalty u/s 271E of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2012-13.

2. Briefly, the facts of the case are as under:

The Respondent-assessee is a partnership firm engaged in the business of trading in gold, silver & precious stones ornaments. The

return of income for the assessment year 2012-13 was filed on 29.09.2012 declaring total income of Rs.6,45,693/-. During the course of assessment proceedings, the Assessing Officer (AO) formed opinion that the assessee firm had repaid loan otherwise than by account payee cheque of Rs.1,25,69,213/- to M/s. Odhekar Jewellers, thereby violating the provisions of section 269T of the Act, accordingly initiated penalty proceedings u/s 271E of the Act.

3. The factual matrix leading to the initiation of penalty proceedings as under:

During the previous year ending on 31.03.2011 the partners of the respondent-assessee firm took loan from India Infoline Finance Ltd. (IIFL) of Rs.1,25,69,213/-. The said loan proceeds were introduced in the books of the respondent-assessee firm. It is stated that while accounting the said transaction the account of Odhekar Jewellers was wrongly credited instead of partners' capital account. On noticing this error in the accounting entry in the subsequent year i.e. assessment year under consideration, the rectification entry was passed in the books of account, wherein Udhekar Jewellers was squared off by debiting with Rs.1,25,69,213/- and crediting the partners capital account. The AO was of the opinion that the loan was repaid otherwise than by way of account payee cheque or bank draft and therefore, violated the provisions of section 269T of the Act attracting the penalty under the provisions of section 271E of the Act, placing reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Triumph International Finance (I) Ltd. 251 CTR 253 (Bom). In response to the show cause notice, the appellant had contended that mere rectification of wrong

entry in the books of account does not amount to repayment of loan and the ratio of decision of the Hon'ble Bombay High Court in the case of CIT vs. Triumph International Finance (I) Ltd. (supra) has no application. Rejecting the above contention, the AO proceeded with levy of penalty of Rs.1,25,69,213/- u/s 271E of the Act vide order dated 28.12.2017. Being aggrieved by the levy of penalty, the appellant filed an appeal before the CIT(A), who vide impugned order held that rectification of wrong entry through journal entry does not amount to repayment of loan, accordingly held that penalty u/s 271E is not leviable in a genuine transaction and accordingly, directed the AO to delete penalty of Rs.1,25,69,213/- u/s 271E of the Act.

4. Being aggrieved by the above order of CIT(A), Revenue is in appeal before us. It is contended that the CIT(A) ought not to have deleted the penalty of Rs.1,25,69,213/- levied u/s 271E without appreciating the fact that loan outstanding in earlier years was repaid through journal entry during the year under consideration. Repayment of loan by passing journal entries in the books of account amounts to violation of provisions of section 269T of the Act and attracts the levy of penalty u/s 271E. The ratio of the decision of Hon'ble Bombay High Court in CIT vs. Triumph International Finance (I) Ltd. (supra) is squarely applicable.

5. On the other hand, learned counsel for the assessee supported the order of CIT(A).

6. We have heard the rival contentions and perused the material on record. The issue in the present grounds of appeal relate to the validity of levy of penalty u/s 271E of the Act. The case of Assessing Officer is that the respondent-assessee had violated the provisions of section 269T of the Act by conduct of the respondent-assessee by squaring off the loan account of Odhekar Jewellers account. The submissions made by assessee company that it is nothing but rectification of wrong entry made in the books of account in the immediate preceding year remain un-controverted. Further, the term 'repayment of loan' pre-supposes receipt of loan. Therefore, the onus lies upon the department to prove the respondent-assessee had received the loan from Odhekar Jewellers. The explanation given by the respondent-assessee that the loan received from IIFL by the partners of assessee firm was brought into the books of assessee firm. It is an admitted fact that the loan received by partners of assessee firm was introduced in the books of account of assessee firm. At the time of loan proceeds were brought into books, instead of crediting capital account of the partners firm, wrongly credited to Odhekar Jewellers. This does not establish the receipt of loan from Odhekar Jewellers by the assessee firm. When there was no receipt of loan, the question of repayment of loan does not arise and when there is no repayment of loan, the question of proceedings for violation of provisions u/s 269T and levy of penalty u/s 271E also does not arise. There is no quarrel as to the legal proposition that the repayment of loan through journal entries is certainly breach of provisions of section 269T of the Act as held by the Hon'ble Bombay High Court in CIT vs. Triumph International Finance (I) Ltd. (supra) and also in 92 taxmann.com 228. But this proposition of law has no application to the

facts of case in hand, inasmuch as, the department had failed to discharge onus of establishing that the respondent-assessee had received loan from Odhekar Jewellers. The decision of CIT(A) is based on proper appreciation of facts and correct decision of law. Therefore, we do not find any perverse illegality in the order passed by the CIT(A). We do not find any merit in the grounds of appeal filed by the Revenue. Accordingly, appeal of Revenue stands dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 19th July, 2022.

Sd/-
S.S.VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th July, 2022
GCVSR

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

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

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune