

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

*(Convened through Virtual Court)*

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR  
& SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 197/Ind/2021  
(निर्धारण वर्ष / Assessment Year : 2011-12)

<b>Shri Ramswaroop Shivhare</b> 47, Durgapuri, Tansen Nagar, Gwalior (M.P.)	<b>बनाम/ Vs.</b>	<b>The Additional Commissioner of Income Tax</b> Central Range, Bhopal
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGHPS8985R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Anil Kamal Garg & Shri Arpit Gaur, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri P. K. Singhi, Addl. CIT. D.R.

सुनवाई की तारीख / Date of Hearing	24/05/2022
घोषणा की तारीख /Date of Pronouncement	02/06/2022

**ORDER**

**PER MAHAVIR PRASAD, JM:**

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Bhopal ('CIT(A)' in short) vide Appeal No. CIT(A)-3/BPL/IT-10380/2019-20 dated 24.08.2021 arising in the penalty order dated 27.09.2019 passed by the Assessing

Officer (AO) under s. 271D of the Income Tax Act, 1961 (the Act) concerning AY. 2011-12.

2. The ground of appeal raised by assessee reads as under:

- “1. *That, the learned CIT(A) grossly erred, both on facts and in law, in passing the ex-parte order without giving proper and effective opportunity of being heard to the appellant by giving an incorrect finding of having considered the oral and written submissions made during the course of hearing whereas the fact remained that first of all, the appellant has not actually made any oral or written submissions before the ld. CIT(A).*
2. *That, without prejudice to the above, on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred, in law, in confirming the action of the ld. Addl. CIT in passing the Penalty Order under S.271D of the Act, on 27-09-2019, which is patently illegal and a nullity, being barred by time inasmuch the penalty proceedings having been initiated by the AO on 05-07-2018 by way of issuance of i. notice, during the course of the assessment proceedings, followed by his further averment in the assessment order for making reference to JCIT/ Addl. CIT for imposition of penalty under S.271D, the impugned penalty could have been imposed only uptill 31-03-2019 in accordance with the provisions of clause (c) of sub-section (1) to section 275 of the Act.*
3. *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the ld. Addl. CIT for imposition of penalty u/s. 271D of the Income-Tax Act, 1961 at Rs.30,00,000/-, which is quite improper, arbitrary, excessive, unjustified, unwarranted and bad-in-law.*
4. *That, without prejudice to the above, the learned CIT(A) grossly erred, in law, in confirming the action of the ld. Addl. CIT for imposing the impugned penalty without first issuing and serving an appropriate notice as required under s. 274 of the Act to/ upon the appellant.*
- 5a) *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the ld. Addl. CIT for imposing the penalty upon the appellant without considering the material fact that the appellant had not committed any contravention of the provisions of S.269SS of the Act and therefore, he was not liable for any penalty u/s. 271D of the Act.*
- 5b) *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the ld. Addl. CIT for imposing the penalty upon the appellant without properly appreciating the submissions and explanations made by the appellant before him.*

- 5c). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the ld. Addl. CIT for imposing the penalty upon the appellant without considering and appreciating the settled law that penalty proceedings are quasi-criminal in nature and therefore, without first establishing, by any positive and cogent evidence, commitment of a default by an assessee, no penalty can be imposed by Revenue.*
- 5d). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on fact and in law, in confirming the action of the ld. Addl. CIT for imposing the penalty upon the appellant on the allegation of acceptance of cash loan by him without first making the necessary enquiry and without first conclusively establishing that there were, in fact, certain persons in existence who had provided cash loans to the appellant and as also, without first establishing that the alleged loan transactions had actually taken place.”*

3. The brief facts of the case are that a search and seizure operation was conducted at the various premises of the Shivhare Group and its associates under section 132(1) of the Income Tax Act, 1961 on 07.01.2016. During the search and seizure action, various documents were found and seized & statements recorded from the premise of Shri Ram Swaroop Shivhare, During the course of assessment proceedings in the case of Shri Ram Swaroop Shivhare (the assessee), it has been found that the assessee received cash loans exceeding Rs, 20,000/- in cash, during the F.Y. 2010-11 relevant to A.Y. 2011-12, in violation of the provisions of section 269SS of the Act. Thereafter, penalty proceedings were also initiated and levied by the AO.

4. Thereafter, assessee preferred first statutory appeal before the learned CIT(A). Before the learned CIT(A), assessee could not file reply to the specific queries and explain the transaction and seized document. The assessee did not submit evidence to substantiate his claim. As argued by the learned AR that sufficient opportunity was not being given to the assessee. Therefore, in view of the facts and circumstances and in the interest of justice, we set aside this matter back to the file of the learned

CIT(A) to pass an order after giving opportunity of being heard to the assessee and thereafter, he shall pass an order as per law.

5. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on 02/06/2022**

Sd/-  
(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER  
Indore: Dated 02/06/2022

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

*True Copy*

*S.K. SINHA*

आदेश की प्रतिलिपि अर्पित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore

- 1.Date of dictation on 31.05.2022
- 2.Date on which the typed draft is placed before the Dictating Member 31.05.2022
- 3.Date on which the approved draft comes to the Sr.P.S./P.S. 02.06.2022
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement 02.06.2022
- 5.Date on which the fair order comes back to the Sr.P.S./P.S
- 6.Date on which the file goes to the Bench Clerk
- 7.Date on which the file goes to the Head Clerk
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order
- 9.Date of Dispatch of the Order