

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 231/MUM/2022 (A.Y. 2014-15)**

Rinku Hemandas Jeswani Prop. of Jai Mata Di Plumbing Works Shop No. 3, Sai Kiran Apartment Opp. Sadhubela School Ulhasnagar 421001  <b>PAN: ADBPJ1062H</b>	v.	Jt.CIT, Range – 2 Mohan Plaza, 2 <sup>nd</sup> Floor Wayale Nagar, Khadakpada Kalyan (W)- 421301
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Dr. K. Shivram</b>
<b>Department by</b>	<b>:</b>	<b>Smt Mahita Nair</b>
<b>Date of Hearing</b>	<b>:</b>	<b>13.07.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>08.08.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-25, National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 22.12.2021 for the A.Y.2014-15.

**2.** Brief facts of the case are, a country wide search action was conducted in respect of the persons associated with Sant Shri Asharam Bapu regarding money lending business. In the country wide search proceedings, a search action was also conducted at the residential premises of Shri Nilesh Shivji Singh, one of the cash loan beneficiaries at 47, Shivtara, Talera Park, Opposite Nagarwala School, Kalyani Nagar, Pune on 9<sup>th</sup> and 10<sup>th</sup> September 2015. During the action, Shri Rajesh B.Karwani, one of the close confidants of Asharam Bapu, who also was acting as courier was found to be present at the premise. His statement was recorded u/s 132(4) and in his statement, he has accepted that he handles a number of cash loan accounts on behalf of Shri Asharam Bapu especially in the western regions of the country. From his possession, a number of diaries and documents were found and seized. He in his statement, accepted the documents to be pertaining to the cash loan accounts and corresponding securities in form of cheques, property agreement etc., received from the parties.

**3.** During the course of search action, statement of Shri Rajesh Karwani, was recorded wherein he has confirmed that against the cash loans, blank undated signed cheques, flat allotment letter, power of

attorney letter, property papers, and the signed stamp papers were taken as security. The property papers and other related papers of the assessee Shri Rinku Jeswani were found in the possession of Shri Rajesh Karwani, wherein it is clear that to secure the said cash loan the assessee has signed various documents. As per the property agreement dated 17.04.2013, it is seen that the assessee has received ₹.1 Crore in Cash and the same was signed by Shri Rinku Jeswani and witnessed by Shri Navin Jeswani. A receipt of having received the sum of ₹.1 Crore in cash by Shri Rinku Jeswani was also noticed from the property document pertaining to the assessee.

**4.** The assessment in the case of the assessee was completed u/s.143(3) r.w.s. 147 of the Act for the impugned assessment year. However, the Assessing Officer came to know that assessee had accepted loan of ₹.1 Crore, in cash that is exceeding ₹.20,000/- during the relevant Financial Year, otherwise than by the account payee cheques or account payee bank draft. Accordingly, notice u/s. 271D u/s. 269SS of the Act were issued and served on the assessee.

**5.** In response assessee submitted that the above said agreement entered by the assessee for accepting the loan is an unregistered

document and not enforceable under any law for the time being in force. It is one sided agreement i.e. there is no other party to the agreement. It also not qualifies as loan security document as there is no mention of any loan/guarantor, it does not reflect any loan transaction and it discloses only that assessee has received a cash sum of ₹.1 crore against agreement for sale of his property. Further, it was informed that there was no statutory restriction on receipt of part sale price in cash upto 31.05.2015 by relying on several decisions by the assessee in this regard.

**6.** The Assessing Officer rejected the submissions of the assessee and by reproducing the agreement of sale in the Assessment Order and also document of general power of attorney seized during the search he observed that it is practice of Shri Rajesh Karwani to lend the loan by adopting this practice. Assessing Officer observed as under: -

*"Information was received in this case from office of the Income Tax Officer-2(3) Kalyan regarding violation of the provisions of section 269SS of the Act by the assessee.*

*A country vide search action was conducted in respect of the persons associated with Sant Shri Asharam regarding money lending business. In the country vide search proceedings, a search action was also conducted at the residential premises of Shri Nilesh Shivji Singh one of the cash loan beneficiaries at 47, Shivtara Talera Park, Opposite Nagarwala School Kalyani Nagar Pune o. 9th and 10th September 2015. During the action, Shri Rajesh B. Karwani one of the close confidants of Asharam Babu who also was acting as courier was found to be present at the premise. His statement was recorded u/s 132(4) and in his statement, he has accepted that he handles a number of cash loan accounts on behalf of Shri Asharam Babu*

*especially in the western region of the country. From his possession, a number of diaries and documents were found and seized. He in his statement, accepted the documents to be pertaining to the cash loan accounts and corresponding securities in form of cheques, property agreement etc received from the parties.*

*During the course of search action, statement of Shri Rajesh Karwani was recorded wherein he has confirmed that against the cash loan, blank undated signed cheques, flat allotment letter, power of attorney letter, property papers and the signed stamp papers were taken as security. The property papers and other related papers of the assessee Shri Rinku Jeswani were found in the possession of Shri Rajesh Karwani, wherein it is clear that to secure the said cash loan the assessee has signed various documents. As per the property agreement dated 17.04.2013, it is seen that the assessee has received Rs. 1 crore in cash and the same was signed by Shri Rinku Jeswani and witnessed by Shri Navin Jeswal. A receipt of having received the sum of Rs.1 crore in cash by Shri Rinku Jeswal was also noticed from the property documents pertaining to the assessee.*

*The assessment u/s 143(3) r.w.s. 147 of the IT Act 1961 for AY 2014 15 was completed by ITO, Ward 2(3) Kalyan in the case of the assessee on 31.12.2018 assessing total income of Rs.7,26,237/- Thereafter the AO intimated this office that the assessee had accepted loan of Rs.1,00,00,000/ i.e. exceeding Rs.20,000/- during the relevant FY otherwise than by an account payee cheque or account payee bank draft. Accordingly penalty proceedings were initiated by issuance of notice u/s 271D r.w.s. 269SS of the IT Act 1961.*

*The assessee did not submit any reply. Later the assessee's AR attended and submitted reply. The assessee's reply has been perused and not found acceptable.*

*During the action, statement of Shri Rajesh Karwani was recorded wherein he had stated that the loans were given by the Shree Sant Aasaram Trust and in return some documents such as undated blank cheques, agreement copy etc. were taken in the form of security. It was stated by Shri Rajesh Karwani that the documents seized from the premises were cash loan related documents against security. The property documents irrevocable power of attorney found in the possession of Shri Karwani and also from the agreement to sell and receipt which were signed by the assessee and also by his brother Navin Jeswani as witness, it is clearly evident that assessee had taken cash of Rs. 1 crore.*

*Thus, from the above facts, it is seen that Shri Rajesh Karwani was closed confidants of Shri Asaram Babu and was also acting as courier and he also stated in the statement recorded on oath that he was taking security against the cash loans in the form of property documents, undated cheques etc. The statement clearly mentions the name of Navin H. Jeswani, who is assessee's brother. From bundle BS-47 are found documents agreement of sale, receipt, power of attorney, which lead to in evitable conclusion that assessee had accepted cash loan of Rs. 1 crores. The receipt of having received Rs. 1 crore in cash is also witnessed by Shri Navin Jeswani. The property document pertaining to the assessee found in the possession of Shri Rajesh Karwani itself proves that the assessee had taken cash of Rs. 1 crore against the property document which was kept as security. The assessee has not been able to furnish any credible explanation as to the circumstances in which he executed set of documents evidencing sale of property without any seller being mentioned and received Rs. 1,00,00,000/- for his pains Accordingly, I was imposed a penalty of Rs. 1,00,00,000/-."*

**7.** Assessing Officer observed that Shri Rajesh Karwani was closed confidants of Shri Asaram Bapu and was also acting as courier and he also stated in the statement recorded on oath that he was taking security against the cash loans in the form of property documents, undated cheques etc. The statement clearly mentions the name of Navin H. Jeswani, who is assessee's brother. From bundle BS-47 are found documents of agreement of sale, receipt, power of attorney, which lead to in evitable conclusion that assessee had accepted cash loan of ₹.1 crore. The receipt of having received ₹.1 crore in cash is also witnessed by Shri Navin Jeswani. The property document pertaining to the assessee found in the possession of Shri Rajesh Karwani itself proves that the assessee had taken cash of ₹.1 crore against the property document

which was kept as security. The assessee has not been able to furnish any credible explanation as to the circumstances in which he executed set of documents evidencing sale of property without any seller being mentioned and received ₹.1,00,00,000/- for his pains. Accordingly, he imposed a penalty of ₹.1,00,00,000/-.

**8.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed grounds of appeal and detailed submissions. However, he failed to comply with the notice u/s. 250 of the Act on several occasions. Ld.CIT(A) sustained the addition by passing the ex parte order.

**9.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

*"I. Natural Justice Ex- Parte Order*

*1. The Learned CIT(A) NFAC erred in passing an ex parte order, without giving a reasonable opportunity to the Appellant to present the case hence the ex-parte order may be set aside.*

*2. The learned CIT (A) failed to appreciate that the notices were issued to the wrong email address. Without appreciating that, while filling appeal before CIT(A) in FORM No. 35, the Appellant has mentioned correct corresponding address well as as correct E-mail ID i.e. jmdplumbingworks@gmail.com. Even though the CIT(A) NFAC has issued notices to the wrong email id i.e. jaisinghanidd@yahoo.co.in, which do not belong to the Appellant. Hence, the ex parte order passed by the CIT(A) NFAC may be set aside.*

*3. The Learned CIT(A) NFAC failed to appreciate that, when the profile of the Appellant has shown the correct email id and correct*

*corresponding address of the Appellant ex parte order passed violating the principles of natural justice and order may be set aside.*

*II. Penalty U/s. 271D of Rs. 1,00,00,000/*

*4. Without prejudice to above, the Learned CIT(A) NFAC erred in confirming the penalty levied by the AO on the basis of statement recorded u/s.131 (1A) of Shri Rajesh Budharmal Karwani without giving an opportunity for cross examination and without providing copy of the statement during the course of assessment proceedings as well as penalty proceedings, therefore penalty confirmed by the CIT(A) NFAC is bad in law and may be deleted.*

*5 The Learned CIT(A) NFAC failed to appreciate that, the appellant has neither accepted any cash loan nor any credit loan from the Sant Asharam Bapu Trust, hence there is no of violation provision of section 269SS. Therefore, penalty confirmed by the CIT(A) NFAC under section 271D for alleged accepting the loan based on the dumb documents found in the third party premises is bad in law and may be directed to be deleted.*

*6. Without prejudice to above, the alleged document refers as advance given for purchase of property hence the documents cannot be interpreted as loan, without giving an opportunity of cross examination.*

*7. The Learned CIT(A) NFAC failed to appreciate that, the Assessing Officer cannot interpret the document as loan and levy penalty u/s 271D of the Act, which is bad in law and liable to be quashed.*

*III. Opportunity of cross examination*

*8. Without prejudice to above, the evidences are used against the assessee, relying on the third party evidence, when the third party has not attended in response to summons issued by the Assessing Officer, addition cannot be made when the witness of the revenue became hostile, and without giving an opportunity of cross examination.*

*9. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."*

**10.** At the time of hearing, Ld. AR brought to our knowledge the exparte order passed by the Ld.CIT(A) and he prayed that it may be remitted back

to the Assessing Officer and Assessing Officer may be asked to redo the assessment since he has levied the penalty based on the third party statement.

**11.** On the other hand, Ld. DR brought to our notice the agreements and power of attorney executed by the assessee which is reproduced in Assessment Order and he submitted that these are agreements for taking loan wherein it is the normal practice that only the loan receiver will execute the document and submit the same. This is part of the security arrangement by Shri Rajesh Karwani who is one of the close confident of Shri Asaram Babu. Therefore, he relied on the findings of the Assessing Officer and prayed that the appeal of the assessee may be dismissed.

**12.** In the rejoinder Ld. AR of the assessee submitted that the submissions of the Ld. DR is nothing but a general statement and there is no specific finding by the Assessing Officer.

**13.** Considered the rival submissions and material placed on record, we observe that Ld.CIT(A) has passed exparte order without properly examining the merits on record and also there is no opportunity for the assessee to place proper evidences on record. Therefore, we remit this

issue back to the file of the Ld.CIT(A) to adjudicate the issue denovo, after giving opportunity of being heard to the assessee. At the same time, we direct the assessee to submit and cooperate before the Ld.CIT(A) in appellate proceedings. Accordingly, grounds raised by the assessee is allowed for statistical purpose.

**14.** In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 08<sup>th</sup> August, 2022.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai / Dated 08.08.2022  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**