

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**
**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 768 & 769/Asr/2017
Assessment Year: 2008-09

Sh. Manjit Krishan Malhotra Vs. Joint Commissioner of Income
Street No. 3, Jain Nagri, Tax Range-2, Bathinda
Abohar

[PAN: ABOPM 0859N]
(Appellant)

(Respondent)

Appellant by : Sh. Anil Puri, Adv.

Respondent by: Sh. Manpreet Singh Duggal, Sr. DR

Date of Hearing: 28.06.2022

Date of Pronouncement: 11.08.2022

ORDER

Per Dr. M. L. Meena, A.M.:

These two appeals have been filed by the assessee against the impugned orders even dated 13.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Bathinda 1961, in respect of the Assessment Year 2008-09, Challenging the levy of penalty u/s 271E and 271D of the Income Tax Act.

2. The assessee has raised the following grounds of appeal in ITA No. 768/Asr/2017

- “1. That the learned C.I.T. (Appeals), Bathinda, erred both in law as well as in respect of the facts of the case while arbitrarily upholding the penalty of Rs. 18,50,000 imposed under section 271D of the Income Tax Act, 1961, vide his order dated 13.10.2017 passed in Appeal No. 146/16-17, without appreciating the facts of the case judiciously.*
- 2. That he was unjustified in rejecting the 1st ground of appeal against penalty order dated 26.10.2016 passed under section 271D, by the Joint C.I.T. Bathinda, was barred by the time limitation u/s 275 (1)(b) of the Income Tax Act, 1961.*
- 3. That, without prejudice to the above, the worthy C.I.T. (Appeals) was further unjustified in upholding the penalty on merits, without appreciating the facts of the case that the Appellant did not raise any loan attracting the provisions of Section 269SS.*
- 4. That the worthy C.I.T.(Appeals) further erred in not appreciating the fact that the Appellant or Mr Rajiv Khanna, both having Agricultural income and neither of them, had any income chargeable to Income Tax under the Income Tax Act, 1961, as per the Second Proviso, the provisions of section 269SS were not applicable.*
- 5. That the Appellant reserves its right to add, amend or withdraw any grounds of appeal before the appeal is finally heard or disposed off.”*

3. Grounds of appeal in ITA No. 769/Asr/2017

- “1. That the learned C.I.T. (Appeals), Bathinda, erred both in law as well as in respect of the facts of the case while arbitrarily upholding the penalty of Rs. 18,50,000 imposed under section 271E of the Income Tax Act, 1961, vide his order dated 13.10.2017 passed in Appeal No. 145/16-17, without appreciating the facts of the case judiciously.*
- 2. That he was unjustified in rejecting the 1st ground of appeal against penalty order dated 26.10.2016 passed under section 271E, by the Joint*

C.I.T. Bathinda, was barred by the time limitation u/s 275 (1)(b) of the Income Tax Act, 1961.

3. *That without prejudice to the above, the worthy C.I.T. (Appeals) was further unjustified in upholding the penalty on merits, without appreciating the facts of the case that the Appellant have neither raised any loan nor made any repayment thereof attracting the provisions of Section 269T of the Income Tax Act.*
4. *That the worthy C.I.T.(Appeals) further erred in not appreciating the fact that the Appellant or Mr Rajiv Khanna, both having Agricultural income and neither of them had any income chargeable to Income Tax under the Income Tax Act, 1961, as per the Second Proviso to Section 269SS, repayment of such amount could not be treated as contravention to section 269T, attracting penalty under section 271E of the Income Tax Act, 1961.*
5. *That the Appellant reserves its right to add, amend or withdraw any grounds of appeal before the appeal is finally heard or disposed off."*

4. There are common issues on identical facts and hence both the appeals are heard together and decided by this common order for the sake of brevity.

5. At the outset, the Id. counsel for the assessee has submitted that the penalty levied and confirmed of Rs.18,50,000/- u/s 271D and 271E are invalid being barred by time limit. The relevant dates for computation of time limitation are that the date of the original penalty order passed u/s 271D and 271E by JCIT, Bathinda dated 10.02.2014; that the order passed u/s 263(1) by PCIT was dated 29.03.2016 cancelling the penalty order, and that no notice for initiation of penalty u/s 271D and 271E was issued in

compliance to above 263 orders prior to the date of issue of show cause notice for levy of penalty u/s 271D and 271E dated 06.10.2016. Thus, the date of time barring of the aforesaid penalties was on 30.09.2016 as per mandate as the penalties levied by the JCIT being deemed to be initiated on 29.03.2016 in compliance the order u/s 263 of the Act. Therefore, by virtue of section 275(1)(b) which is expired within six months as above.

6. The Id. CIT(A) has observed vide 7 as under:

In view of all the facts noted above, the plea of the assessee regarding limitation is liable to be rejected. ”

6.1. *A copy of the above report was given to the appellant who reiterated his arguments and contended that the order of penalty is barred by limitation.*

6.2 *I have considered the contention and find that the penalty has been levied within the prescribed period because after passing of order u/s 263 of the Act. The earlier penalty order dated 10.02.2014 cease to exit. Thereafter, the Joint Commissioner of Income Tax, Range-II, Bathinda in compliance to the directions issued by order u/s 263 for passing afresh order of penalty had issued notice dated 01.10.2016. The period of limitation would start from this date of issue of notice. I agree with the reasoning given in the report above, that period of limitation has not been breached even otherwise both for section 275(l)(c) or 275(l)(b) of Income Tax Act. The contention of the appellant is rejected.*

7. I have also considered the merits of contentions *that aforesaid amount was given in cash for purchasing joint properties. The contention does not get supported which is evident from the account submitted by the appellant as under:*

		Debit	Credit	Balance	Days
31/05/2007	Cash	11,50,000		11,50,000	1
01/06/2007	Cash		11,50,000	nil	
11/06/2007	Cash	5,00,000		5,00,000 Dr.	38 days

19/07/2007	Cash	2,00,000		7,00,000 Dr.	1 day
20/07/2007	Cash		1,00,000	6,00,000 Dr.	1 day
20/07/2007	Cash		1,00,000	5,00,000 Dr.	5 days
25/08/2007	Cash		5,00,000	nil	

7. The Ld. AR stands by the impugned common order of the CIT(A).

8. We have heard both the sides and perused the material on record. The Ld. Counsel contended that no notice for initiation of penalty u/s 271D and 271E was issued in compliance to order passed u/s 263 of the act, prior to the date of issue of show cause notice for levy of penalty u/s 271D and 271E dated 06.10.2016. Thus, the date of time barring of the aforesaid penalties was being on 30.09.2016 as per mandate, as the penalty levied by the JCIT being deemed to be initiated on 29.03.2016, taking the date of the 263 order itself, for initiation of subject penalties in compliance the order u/s 263 of the Act. Therefore, by virtue of section 275(1)(b) these were expired within six months as above. However, the CIT (A) held that by virtue of section 275(1)(c) these were not expired as one year time was available. In our view, it is a question of fact, required to be verified and ascertained by the AO, the JCIT, in the present cases, from the office record, whether the proper required satisfaction has been recorded for initiation of penalty proceeding and the date of initiation of penalties u/s

271D and 271E of the act, if any, in compliance to the order passed u/s 263 by the PCIT; and if yes, whether these were time barred. Accordingly, we consider these cases fit to be restored to the JCIT, to examine the issue of initiation of penalties u/s 271D and 271E of the Act afresh, on two points whether these penalties were time barred and was there absence of required satisfaction as claimed by the Ld. AR for the appellant assessee. Accordingly these two matters are remanded back to the file of the AO to adjudicate the issues afresh after granting adequate opportunity of being heard to the assessee.

9. In the result, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 11.08.2022.

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order