आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1396 & 1397/PUN/2018
निर्धारणवर्ष / Assessment Year : 2010-11 & 2012-13

Kacharu Madhukar Shinde, Near Patil Hospital, Nath Nagar, At & Post & Taluka Pathardi, Ahmednagar – 414102. PAN: FUXPS 7694 C	Vs	The Joint Commissioner of Income Tax, Ahmednagar Circle, Ahmednagar – 414001.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Prasad S. Bhandari – AR
Revenue by	Shri Ramnath P Murkunde –DR
Date of hearing	15/09/2022
Date of pronouncement	06/12/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee i.e.Kacharu M.Shinde against the order of ld.CIT(A)-2, Pune dated 13.04.2018 for A.Y.2010-11 emanating from the penalty order under section 271E of the Income Tax, dated 27.04.2017 for A.Y. 2010-11. The grounds of appeal raised by the assessee are as under:

> *"1. In the facts and circumstances of/The case and in law, the learned C.I.T.[A] has erred in confirming the penalty of Rs.5,90,644.00 levied by the learned Assessing Officer u/s 27IE of the I. T. Act 1961. The impugned penalty levied being bad in law, arbitrary, perverse and devoid of merits the same may please be deleted.*

2. In the facts and circumstances of the case and in law, both the lower authorities have failed to appreciate that there was no violation of the provisions of Section 27IE of the I. T. Act 1961 and hence the impugned penalty being without jurisdiction the same may please be deleted.

3. Without prejudice to above both the grounds of appeal and by way of an alternate submission, the appellant submits that the learned C.I.T.[A] has failed to appreciate that there was reasonable cause for the appellant in making the repayment of loan by journal entry and in the circumstances the learned C.I.T.[A] ought to have deleted the impugned penalty.

4. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal."

2. The assessee for A.Y.2012-13 raised following grounds of appeal :

1. In the facts and circumstances of the case and in law, the learned C.I.T.[A] has erred in confirming the penalty of Rs.4,36,171.00 levied by the learned Assessing Officer u/s 271E of the I. T. Act 1961. The impugned penalty levied being bad in law, arbitrary, perverse and devoid of merits the same may please be deleted.

2. In the facts and circumstances of the case and in law, both the lower authorities have failed to appreciate that there was no violation of the provisions of Section 27IE of the I. T. Act 1961 and hence the impugned penalty being without jurisdiction the same may please be deleted.

3. Without prejudice to above both the grounds of appeal and by way of an alternate submission, the appellant submits that the learned C.I.T.[A] has failed to appreciate that there was reasonable cause for the appellant in making the repayment of loan by journal entry and in the circumstances the learned C.I.T.[A] ought to have deleted the impugned penalty.

4. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

3. The assessee also taken an additional ground of appeal as under:

"Gr. No. 5: The Hon'ble CIT(A) is not justified in confirming the penalty levied by the Ld. Assessing Officer under section 271E as the assessment order in which the penalty was initiated is bad in law since there was no addition on account of the reason for which notice under section 148 was issued. Thus, the assessment order becomes bad in law in the light judgment of Hon'ble Bombay High Court in the case of CIT v. Jet Airways (I) Ltd. therefore, the impugned penalty may please be deleted."

4. Brief facts of the case: In this case, assessment under section 143(3) r.w.s 147 for A.Y.2010-11 was completed on 11.03.2016 assessing the total income at Rs.1,71,950/-. During the assessment proceedings, the Assessing Officer(AO) observed that assessee had re-paid loan in cash exceeding Rs.20,000/- aggregating to Rs.5,90,644/- during the F.Y.2009-10. The AO referred the case to the Ld.JCIT. The Ld.JCIT after giving opportunity to the assessee, passed the order under section 271E levied the penalty of

Rs.5,90,644/-. As per the penalty order, following loans have been re-paid in cash.

Sr.No	*Name of the Depositor*	*Date of repayment*	*Amount Rs.*
1)	*Swami Samarth Nagari Sah. Pat Sanstha, Pahardi*	*20.11.2009*	*21,459*
2)	*-do-*	*20.08.2009*	*25,000*
3)	*-do-*	*14.09.2009*	*5,44,185*
	Total		*Rs.5,90,644/-*

5. The assessee had accepted that repayment was made in cash. Aggrieved by the penalty order, the assessee filed an appeal before the ld.CIT(A).

6. The ld.CIT(A) held as under:

> *"5.8 On merit also, the appellant has no case. As per the facts discussed supra, the appellant has undisputedly admitted repayment of loan in cash otherwise than by account payee cheque or account payee Bank draft. The appellant has not been able to make out any case of extreme and exceptional necessity making such repayments in cash. The appellant has failed to establish immediate and urgent need which prevented it from making repayment through account payee cheques or account payee Bank drafts.*
>
> *5.9 Hon'ble Karnataka High Court in the case of CIT vs. Canara Housing Development Co in 234 Taxman 719 (Karnataka) has held that "Where assessee had received loan/ deposit through non-banking mode, in contravention of section 269SS but could not provide reasonable cause for such contravention, Tribunal was not justified in deleting penalty."*
>
> *5.10 Hon'ble Allahabad High Court also in the case of CIT vs.*

Sunil Sugar Co in 85 taxmann.com 254 (Allahabad) has held similar view by holding that where the assessee could not prove that it had a reasonable cause which had occasioned above contravention to get any advantage under section 273B, Tribunal was not justified in deleting penalty.

5.11 The ratio of the decision of the aforesaid cases also applies to the facts of the present case. The Reliance placed by the appellant on various decisions are not applicable to the facts of the present case and the same are distinguishable. In fact those decisions have no application to the facts of the present case.

5.12 The appellant has also argued that he was ignorant about the provisions of Section 269T r.w.s. 271E of the IT Act. This argument is simply not acceptable as because ignorance of law cannot be an excuse for violating the provisions of law. Hon'ble ITAT Amritsar bench in the case of Ajit Singh Rana vs. ACIT in 33 taxmann.com 502 (Amritsar - Trib.) has held that ignorance of law cannot be a reasonable cause for failure to file audit report and for not levying penalty.

5.13 Similarly Hon'ble ITAT Banglore bench in the case of M.M.Bagawan and Brothers vs. ACIT in 9 ITR(T) 162 has held as under:

> *"However, in the case on hand, the assessee's sole reasoning was being 'ignorance of law'. The assessee. could not take sanctuary under the context of ignorance of law which prevented it from filing an application under section 154 for rectification of the order passed more than four years back. As a matter of fact the Legislature was very magnanimous and considerate in its wisdom to prescribe four long years time for seeking any rectification in the earlier order passed. Had there been the assessee an individual and pleading for clemency citing ignorance of law, there would be some sort of justification in such a claim. Even*

though ignorance of law is not an excuse under the law. The assessee being a partnership firm ably assisted by its seasoned auditors who were in the helm of its tax matters for the years, its plea that it was an ignorance of law which prevented it from seeking rectification of its assessment order within the time frame, did not carry any conviction. Further, it was pertinent to mention here that no reason whatsoever adduced as to how the assessee was prevented by a reasonable and justifiable cause to beat the time frame prescribed under the Act for seeking rectification of the assessment even though no mistake had crept in the assessment order conclude."

6. In the light of aforesaid discussion on the facts of the case and decisions cited, I hold that the appellant has failed to make out any case of reasonable cause so as to seek relief u/s 273B of the Income Tax Act. The provision of Section 269T is a mandatory provision and therefore the appellant has clearly made repayment in cash otherwise than by account payee cheques or account payee Bank drafts in violation of the provision and therefore, he is liable for levy of penalty u/s. 271E to the Income Tax Act. I therefore confirm the penalty of Rs. 5,90,644/- as levied by the JCIT Ahmednagar Range, Ahmednagar. His order is accordingly confirmed. The ground is accordingly dismissed.

7. In the result, the appeal is DISMISSED."

7. Aggrieved by the order of ld.CIT(A), the assessee filed appeal before this Tribunal.

8. The ld.Authorised Representative (ld.AR) of the assessee relied on the order of ITAT Pune in the case of ACIT Vs. Chantamani Nagri Sahkari Patpedhi Ltd., in ITA No.803/PN/2007 dated 16.11.2010. The ld.AR also submitted that it was bonafide

payments. Therefore, the ld.AR submitted that assessee has not committed any default. The ld.AR also submitted that both the entities are tax payers since penalty is not attracted. Regarding the additional ground, the ld.AR submitted that it is a legal ground and hence needs to be admitted. The ld.AR submitted that there is no addition with respect to loans in the assessment order and hence the assessment order is all in law as there was no addition on account of the reasons for which notice under section 148 was issued.

9. The ld.Departmental Representative(ld.DR) for the Revenue submitted that it is an admitted fact that assessee has made cash payments.

10. We have heard both parties and perused the records. It is an admitted fact by the Assessee that repayments of Loan were made in cash exceeding Rs.20,000/-. This fact has not been disputed by the Ld.AR. The assessee failed to prove that the payments were made in some exceptional circumstances. The Section 269T and Section 271E as applicable for relevant year are reproduced here as under :

> *"**269T.** No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if—*
>
> *(a) the amount of the loan or deposit together with the interest, if any, payable thereon, or*
>
> *(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or,*

as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, is twenty thousand rupees or more:

Provided *that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :*
[***Provided further*** *that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from—*
(i) Government;
(ii) any banking company, post office savings bank or co-operative bank;
(iii) any corporation established by a Central, State or Provincial Act;
(iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.]
Explanation.—For the purposes of this section,—
(i) "banking company" shall have the meaning assigned to it in clause (i) of the Explanation to section 269SS;
(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
(iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.]

271E. *[60][(1)] If a person repays any [61][loan or] deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [61][loan or] deposit so repaid.]*
[62] [(2) Any penalty imposable under sub-section (1) shall be imposed by the [63] [Joint] Commissioner.]"

11. There are specific exceptions provided in the Section. The assessee is not covered by any of the exceptions. Therefore, since the assessee has repaid loan in cash in excess of Rs.20,000/-, the assessee is liable for penalty u/s 271E. Hence, we uphold the penalty u/s 271E. Accordingly the grounds of appeal raised by the assessee are dismissed. The assessee has relied on the ITAT decision in the

case of Chintamani Nagri Sahkari Patpedhi Ltd., in ITA No.803/PN/2007 dated 16.11.2010. The said case is factually distinguishable as in the case of Chintamani Nagri Sahkari Patpedhi Ltd., the transaction was between the Co-operative Bank and its Members. Therefore, it is factually distinguishable.

12. **Additional Ground :** Assessee has raised additional ground before the Tribunal. We are of the opinion that the Penalty Proceeding and assessment proceeding are different Proceeding. The Present appeal of the assessee is against Penalty u/s 271E. During this appeal which is against Penalty, the assessee cannot raise the ground that the assessment order was bad in law. It seems that assessee had not filed any appeal against the assessment order, hence during the Penalty Appeal, the assessee cannot raise ground about validity of the assessment. The casus of action for this present appeal is Penalty and not the assessment order. Therefore, the Additional Ground is dismissed.

13. In the result, the appeal of the Assessee is Dismissed.

ITA No.1397/PUN/2018 for A.Y. 2012-13 :

14. For A.Y. 2012-13, there was re-payment of loan in cash exceeding Rs.20,000/-, aggregating to Rs.4,30,171/-. The ld.JCIT levied penalty under section 271E of the Act. All the facts of the A.Y. 2012-13 are identical to facts in the A.Y.2010-11, hence, our decision for A.Y.2010-11 will apply *mutatis-mutandis* to the A.Y. 2012-13. Accordingly, appeal of the assessee in ITA No.1397/PUN/2018 is dismissed.

15. In the result, appeal of the Assessee is Dismissed.

16. To sum up, both appeals of the Assessee are Dismissed.

Order pronounced in the open Court on 6th December, 2022.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 6th Dec, 2022/ *SGR**

<u>आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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