

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 301/Srt/2022 (Assessment Year: 2015-16)
(Virtual hearing)

Shri Pravinbhai Keshavbhai Patel, A/2, Golden Park Society, Opp. Prime Arcade, Aanand Mahal Road, Adajan, Surat. PAN No. ADGPP 4549 L	Vs.	Addl.C.I.T.,Range-1(3), Surat
Appellant/ assessee		Respondent/ revenue

ITA No. 302/Srt/2022 (Assessment Year: 2015-16)

Smt. Pravinaben Pravinbhai Patel, A/2, Golden Park Society, Opp. Prime Arcade, Aanand Mahal Road, Adajan, Surat. PAN No. CDOPP 3300 D	Vs.	Addl.C.I.T.,Range-1(3), Surat
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Bharat Jhaveri, AR
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	03/01/2023
Date of pronouncement	03/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by two assesseees are directed against the separate orders of National Faceless Appeal Centre, Delhi (in short, the NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 10/12/2021 and 15/09/2022 which in turn arises from the order of penalty levied under Section 271D of the Income Tax Act, 1961 (in short, the Act) dated 29/11/2019 for the Assessment year (AY)

2015-16. In both these appeals, the assessee(s) has raised certain common grounds of appeal, facts in both these years are similar, except variation of figure of penalty under section 271D, therefore, with the consent of parties, both these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal in ITA No. 301/Srt/2022 for the A.Y. 2015-16 is treated as a "lead case". In this appeal, the assessee has raised following ground of appeal:

"1. On the facts and circumstances of the case as well as law on subject the learned CIT(A) National Faceless Appeal Centre (NFAC) Delhi erred in dismissing the appeal without properly considering the facts of the case. And case laws on which your appellants relied."

2. Brief facts of the case are that the assessee is an individual, filed his return of income for A.Y. 2015-16 on 24/07/2015 declaring income of Rs. 2,51,190/-. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Act on 29/11/2017. The Assessing Officer during the assessment noted that the assessee has purchased agricultural land for a consideration of Rs. 1.29 crore with other nine persons (co-owners). The assessee has paid an amount of Rs. 14,33,333/- as his share on account of consideration of land. In addition to sale consideration, the assessee has also certain charges in cash, which includes registration charges of Rs. 87,669/-, stamp duty of Rs. 70,226/- and other charges of Rs. 3000/-. In additions to these expenses the assessee also paid part consideration of Rs. 1,86,648/-

and Rs. 66,648/- to seller Jahagir Abdul Rasid Mirza and Zeeramkanam Gulam Mohd Shaikh respectively. Thus, the assessee total paid Rs. 5,59,944/- in cash. The total amount paid by assessee of his share was of Rs. 15,21,002/-. The Assessing Officer issued show cause notice to the assessee to substantiate the claim of cash payment. The assessee filed his reply. The Assessing Officer after considering the submission of assessee, treated the investment of Rs. 8,15,695/- as unexplained investment and made addition under Section 69 of the Act. The Assessing Officer also made another addition of Rs. 1,62,437/- under Section 69C on account of cash payment made for converting the land into old tenure from new tenure and paid premium of Rs. 25,34,090/-. The assessee was having 6.67% share in the property, therefore, 6.67% share which were about Rs. 1,62,437/- was treated as payment from unexplained source under Section 69C of the Act, which is not the subject matter of these appeals. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

3. Subsequently, penalty under Section 271D was levied by the Additional Commissioner of Income, Range-1(3), Surat. The Additional Commissioner of Income tax (Add. CIT) while levying the penalty under Section 271D noted that the assessee has made payment of Rs. 5,59,944/- in contravention of condition of Section 269SS of the Act. On

further appeal before the NFAC/CIT(A), the action of Add. CIT in levying penalty under section 271D was upheld. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

4. I have heard the submission of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Sr. DR) for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that the assessee is an agriculturist and was having no taxable income in the past. He has not filed return of income in earlier years. During the year under appeal, the assessee and other family members sold agricultural land by converting it into non-agricultural land. On sale of such agricultural land, the assessee earned long term capital gain, so the assessee filed return of income. On sale of such land, the assessee and his family members purchased another agricultural land. The assessee in order to make payment of his share was received gift from his brother Shri Natwarbhai K Patel, who is also agriculturist. During the assessment proceedings, the assessee explained that the assessee due to inadvertence stated that he has obtained loan from his brother instead of gift. The Add. CIT levied penalty under Section 271D of the Act. The assessee also explained that taking temporary accommodation from family members, does not amount to transaction of loan or deposit to attract the penal consequences of Section 269SS of the Act. To

support such view, the assessee relied on the following case laws before Id CIT(A).

- (i) CIT Vs Sainy Medical Store 277 ITR 420 (P&H)
- (ii) Dr. Deepak Muchhala Vs ITO 58 TTJ 524 (Bom)
- (iii) CIT Vs Maa Khodiyar Construction 45 taxmann.com 566 (Guj)
- (iv) Veer Sales Corporation Vs ACIT 50 TTJ 130 (Ahd.)
- (v) Shreenath Builders Vs DCIT (2000) 111 Taxman 142 (Ahd.)
- (vi) CIT Vs Sree Krishna Promoters & Builders (2011) 16 taxmann.com 138 (Kar.).

5. The Id. AR for the assessee submits that the Id. CIT(A) simply noted that the decision relied by the assessee are on different facts. The Id AR for the assessee submits that genuineness of the transaction was not doubted by the assessing officer or Id CIT(A). The assessee is agriculturist and availed gift form his brother who is also agriculturist and the rigorous of section 269SS is not applicable on the persons if the recipient and depositor both are agriculturist. To support his submissions, the Id AR for the assessee relied on the decision of Chandigarh Tribunal in ITO Vs Rajendra Trading Company (1994) 48 ITD 210(Chd).

6. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id SR DR for the revenue submits that the assessee was granted full opportunity before levying penalty by Add. CIT. The Id Sr DR for the revenue prayed for dismissal of appeal.

7. After hearing the submissions of both the Id representative of the parties, I raised the quarry to Id DR for the revenue that the assessing officer has not initiated penalty proceeding/ recorded his satisfaction for initiating penalty under section 271D, while passing the assessment order nor recorded the satisfaction about making any reference to Joint Commissioner or Additional commissioner for levying penalty under section 271D. The Id Sr DR for the revenue was also confronted with the decision of Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (2015) 64 taxmann.com 75 (SC), wherein such condition is laid down by Hon'ble Apex Court.
8. The Id. Sr. DR for the revenue submits that the assessee has not raised such legal grounds and non-recording of such satisfaction in the assessment order, about the initiation of penalty under Section 271D is a curable defect. The assessee has not disclosed as to what prejudice is caused to the assessee. The fact remains that the assessee has violated the statutory provisions of Section 269SS in accepting loan or deposit otherwise than account payee cheques or banker cheque or electronic clearing system of more than rupee twenty thousand which attracts the penalty of equal amount under section 271D.
9. I have considered the rival submissions of both the parties and have gone through the orders of the lower authorities. I find that the Assessing Officer passing the assessment order under Section 143(3) of

the Act on 29/11/2017. The Assessing Officer in para 4 of the assessment order recorded that the assessee has made cash payment either to the seller of land or on account of various expenses which includes purchase of stamp duty or registration charges. The Assessing Officer noted that the assessee has incurred Rs. 5,59,944/- in cash.

10. I find that the Assessing Officer though, at the time of passing the assessment order, initiated penalty under Section 271(1)(c) of the Act. However, there is no whisper in the assessment order regarding initiation or satisfaction about the initiation of penalty under Section 271D of the Act. The Id. Add. CIT levied penalty vide order dated 29/09/2019 of Rs. 5,59,944/-. I find that the Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (2015) 64 taxmann.com 75 (SC) held that wherein no satisfaction was recorded for initiating penalty proceedings under Section 271E, the impugned penalty order passed under said Section deserve to be set aside. Considering the fact that there is no satisfaction about initiation of penalty under Section 271D, therefore, respectfully following the decision of Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (supra), the penalty levied by Addl. CIT vide his order dated 29/09/2019 is quashed/set aside. In the result, ground of appeal raised by the assessee is allowed.

11. Considering the fact that I have quashed the penalty order under Section 271D on legal ground on the basis of decision of Hon'ble Apex

Court, therefore, consideration and adjudication of the various plea of Id. AR of the assessee has become academic. In the result, the sole ground of appeal raised by the assessee is allowed.

12. In the result, this appeal of assessee is allowed.

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13. As recorded earlier the assessee has raised similar ground of appeal as raised in appeal in ITA No. 301/Srt/2022 for A.Y. 2015-16, except variation of amount of penalty. Considering the fact that I have quashed the penalty order of Id. Add. CIT, therefore, considering the principle of consistency, the appeal of ITA No. 302/Srt/2022 for the A.Y. 2015-16 is also allowed with similar findings. In the result, this appeal is also allowed.

14. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 03rd January, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 03/01/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat