

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 1738/Ahd/2016
(Block Period 01/04/1995 to 19/12/2001)
(Physical hearing)

Parivar Television Pvt. Ltd., Pasrag Apartment, Near Badekha Chakla Police Chowky, Momnawad, Gopipura, Surat-395001 PAN No. AABCP 5942 J	Vs.	D.C.I.T., Circle-2(1)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Hiren Vepari, CA
Department represented by	Shri Ashok B Koli, CIT-DR
Date of hearing	30/12/2022
Date of pronouncement	03/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-II, Surat (in short, the Id. CIT(A)) dated 30/03/2016 for the Block period 01/04/1995 to 19/12/2001 wherein the assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, the Id. CIT(A) erred in retaining penalty u/s 271D of Rs. 2,17,11,192 out of Rs. 2,79,47,692.*
- 2. The appellant submits that item wise explanation of 114 deposits spanning over 19 pages was prepared and culled from the seized books and records and not from the computerized books as has been mentioned by the learned CIT(A).*
- 3. The appellant further submits this entire statement prepared and furnished was neither examined by the Additional Commissioner of Income Tax, Baroda in remand proceedings though it was with him for seven months and the Assessing Officer at Surat though it was with him for two*

years and therefore, the details prepared by the appellant remained uncontroverted.

4. *The appellant further submits that the learned Commissioner of Income Tax (Appeals) was not justified in confirming penalty on amounts received and shown in the seized cash book/ledger were cheques numbers were mentioned.*
5. *The appellant further submits that the learned Commissioner of Income Tax (Appeals) erred in confirming penalty on amounts which were not received at all.*
6. *The learned Commissioner of Income Tax (Appeals) erred in not considering the plea of the appellant for deletion of penalty based on judgments given for
(a) ignorance of law; (b) urgent necessity; (c) no intention to evade tax;
(d) not considering the impact of Circular No. 387 dated 06/07/1984.*
7. *The appellant craves leave to add, alter or vary any of the grounds of appeal.”*

2. The assessee has raised additional ground of appeal which reads as under:

“Penalty order u/s 271D is time bared in terms of limitation U/s 275(1)(c) of the Act.”

3. The assessee again vide application dated 11.11.2022 has also raised second additional ground of appeal which reads as under:

“With no satisfaction recorded for initiating penalty proceedings u/s 271D in the assessment order, the penalty is required to be deleted in view of the Supreme Court decision in case of Jai Laxmi Rice Mills Ambalal City (64 taxmann.com 75) and Surat Tribunal in case of the Nizar Taluka Sahkari Kharid Vechan Sangh Ltd. (3157/Ahd/2015).

4. In support of additional grounds of appeal, the learned Authorised Representative (Id. AR) of the assessee submits that first and second additional grounds of appeal is purely legal in nature. No additional fact is to be brought on record for adjudicating the additional grounds of appeal. All facts for consideration of additional grounds of appeal are emanating from the orders of lower authorities. Both the additional grounds of appeal are purely legal in nature and goes to the root of the

matter. To support his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Apex Court in the case of National Thermal Power Corporation (NTPC) 229 ITR 383 (SC), West Bengal State Electricity Board (198 –CTR-122 (Cal), Bharat Rice Mill- 148 Taxman 145 (All), Dalmia Dairy Industries Limited 319 ITR 2 (SC) .

5. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue submits that the assessee has raised second additional ground of appeal for the first time before the Tribunal. No such factual objection was ever raised by assessee either at the time of levying penalty under Section 271D dated 20/06/2015 or before the Id. CIT(A) or before the Tribunal in first round of appeal. The Id. CIT-DR submits that no recording satisfaction at the time of initiation of penalty proceedings in the assessment is curable defect and that the assessee has not explained the prejudice caused to the assessee in not recording such satisfaction at the time of passing of assessment order. On the first ground of appeal the Id CIT-DR for the revenue submits that in first round of appeal before Tribunal, similar ground of appeal was taken and was decided against the assessee. The Id. CIT-DR also filed his written submission dated 29/12/2022 which is also taken on record.
6. We have considered the submissions of both the parties for admission of second additional ground of appeal. We find that the assessee has raised

second additional ground of appeal for the first time before the Tribunal. The second additional ground of appeal is purely legal in nature. We further find that no new or additional fact is required to be brought on record for adjudicating such additional ground of appeal. The fact relating to adjudication of such second additional ground of appeal is emanating or apparent from the orders of lower authorities. Considering the decision of Hon'ble Apex Court in the case of NTPC (supra) wherein no new facts for adjudication of additional ground of appeal is required to be brought on record and/or the additional ground of appeal is purely legal in nature, may be admitted for adjudication. Therefore, in view of the aforesaid factual and legal discussion, the second additional ground of appeal raised by assessee is admitted for adjudication. Now advertent to the facts of the case.

7. Brief facts of the case are that the assessment in the present case was completed on 31/12/2003 under Section 158BC r.w.s. 158BG/144 of the Act in making total addition of Rs. 1.09 crore. The Assessing Officer at the time of passing the assessment order has not initiated any kind of penalty. Subsequent of passing the assessment order, a reference was made by the Assessing Officer for initiation of penalty proceedings vide reference dated 14/05/2004 for initiation of penalty under Section 271D for violation of Section 269SS in respect of various deposits/ loan received by the assessee in cash in excess of Rs. 20,000/-, during the relevant

financial year. The Additional Commissioner of Income Tax levied penalty under Section 271D vide his order dated 20/06/2005. On further appeal before the Id. CIT(A), the order of penalty under section 271D was upheld vide order dated 24.03.2006. however, on further appeal before Tribunal in ITA No. 124/Ahd/2006, vide order dated 29.02.2012, the matter was restored back to the file of Id CIT(A) to examine certain evidence in the form of bank statement and to decide the issues afresh. The Id CIT(A) in his fresh order dated 30.03.2016 granted partial relief to the assessee. Further aggrieved, the assessee has filed present appeal before the Tribunal.

8. We have heard the submissions of the Id. AR for the assessee and the Id CIT-DR for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee on his second additional ground of appeal submits that the Assessing Officer while passing the assessment order on 31/12/2003 has not recorded any satisfaction about initiation of penalty under Section 271D of the Act. The Id. AR of the assessee carried us through the contents of assessment order and would submit that there is no whisper about the initiation of penalty under Section 271D or any whisper for making any reference for initiation of penalty under Section 271D of the Act. The Id. AR for the assessee submits that the Hon'ble Apex Court in the case of 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. The Id. AR submits that Section 271E and 271D are having similar criteria, one penalty relates to making payment and the other relates to taking or accepting loan in cash in excess of Rs. 20,000/- in cash in contravention of Section 269SS. The Id. AR further submits that the Coordinate Bench of Surat Tribunal while following the order of Hon'ble Apex Court in Jai Laxmi Rice Mills (supra), deleted the similar penalty under Section 271D.

9. The Id. AR further submits that he has already filed his submission on first additional ground of appeal which relates to time limit for passing the penalty order as prescribed under Section 275, as well as he has also filed his written submission on merit on the case. The Id. AR for the assessee submits that in case, the second additional ground of appeal is allowed, the other contention raised by assessee would become academic.
10. On the other hand, the Id. CIT-DR for the revenue submits that language of Section 271D or 274 nowhere prescribed for recording satisfaction for initiation of proceedings. Rather Section 274 speaks about providing reasonable opportunity before levying penalty. The assessee was given full opportunity before levying such penalty under section 271D. The Id AR for assessee failed to demonstrate the prejudice caused to the

assessee in not recording about initiation of penalty at the time of passing the assessment. Not making or recording satisfaction about the initiation of penalty under section 271D is merely a curable defect. The assessee has nowhere raised such objection either at the time of penalty proceedings or at first appellate stage.

11. We have considered the submissions of both the parties and have gone through the assessment order dated 31/12/2003. On careful perusal of the assessment order, we find that there is no whisper or reference in the assessment order about initiation of penalty under Section 271D. We further find that there is no whisper about making a reference to the Joint Commissioner or Additional commissioner for levying such penalty. We find that the Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (supra), while considering the similar questions of law held that when no satisfaction recording regarding penalty proceedings under Section 271E, in the assessment order was recorded while passing the assessment order, no penalty could be levied. We further find that by following the order of Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (supra), the Coordinate Bench of Tribunal in The Nizar Taluka Sahkari Kharid Vechan Sangh Ltd. Vs JCIT in ITA No. 3157/Ahd/2015 dated 13/12/2019 also held that when no satisfaction has been recorded by the Assessing Officer before initiating penalty, no penalty under Section 271D could be levied. The order of Hon'ble Supreme Court, which is binding precedent by virtue

of Article 141 of the Constitution of India and respectfully following the same the penalty order under section 27D dated 20/06/2005 is set aside/quashed.

12. So far as submissions of Id CIT-DR for the revenue that non recording satisfaction of initiation is merely a curable defect, we are not convinced with such submission after clear cut finding of the Hon'ble Apex Court in CIT Vs Jai Laxmi Rice Mills (supra). In the result, the second additional ground of appeal is allowed.
13. Considering the fact that we have allowed the second additional ground of appeal, therefore, adjudication of other grounds of appeal either on primary grounds of appeal or additional ground of appeal have become academic.
14. In the result, this appeal of assessee is allowed.

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

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 03/01/2023

**Ranjan*

Copy to:

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By Order

Sr. Private Secretary, ITAT, Surat