

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 218/Srt/2022 (Assessment Year: 2011-12)

A.C.I.T., Central Circle-4, Surat.	Vs.	Late Amratlal Devchandbhai Patel, Through L/H-Jignesh Amritlal Patel, 8, Pratistha Park, Sarelawadi, Ghod dod Road, Surat. <b>PAN No. ABRPP 3569 R</b>
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri Vinod Kumar, Sr.DR
Assessee represented by	Shri Rasesh Shah, CA
Date of hearing	13/01/2023
Date of pronouncement	30/01/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A) dated 06/05/2022 for the Assessment year 2011-12. The Revenue has raised following grounds of appeal:

- “(i) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty levied of Rs. 1,00,00,000/- under Sec.271E of the Act on the ground that the penalty levied on the deceased person becomes null and void, without appreciating the fact that sufficient opportunities of being heard were provided to the assessee by issue of notices and the legal heir of the assessee has availed the same by furnishing submissions from time to time and has not raised any objections against the notices issued in the name of the deceased assessee.*
- (ii) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty levied of Rs. 1,00,00,000/- under Sec.271E of the Act by placing reliance on the decisions of the Hon'ble Gujarat High Court in the case of Vikram Singh Vs. Union of India (401 ITR 302) and Hon'ble Delhi High*

*Court's decision in the case of Rajender Kumar Singhal Vs. ITO (101 Taxmann.com 233), without appreciating the fact that in those cases the legal heirs of the deceased-assesseees have filed objections during the course of proceedings against the issue of notice in the name of the deceased person whereas in the case under consideration the legal heir of the assessee has not raised any objection as regards the issue of notice in the name of the deceased person and further complied with the notices issued during the course of penalty proceedings.*

- (iii) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty levied of Rs. 1,00,00,000/- under Sec.271E of the Act without considering the decision of the Hon'ble Gujarat High Court in the case of Urmilaben Anirudhhasinhji Jadeja Vs. Income-tax Officer(in SCA No.15310 of 2018) wherein the issue has been elaborately discussed and arrived at the ratio decidendi that when there is active participation by the legal heir post issue of notices and there is no objection filed by the legal heir against the notice, then such notices would be covered under Sec.292B of the Act, as against the cases where objections are filed or when there is no participation.*
- (iv) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty levied of Rs. 1,00,00,000/- under Sec.271E of the Act on the ground that the penalty levied on the deceased person becomes null and void, without appreciating the fact that the legal heir of the deceased assessee has not raised any objections during the course of penalty proceedings and hence the issue of notice in the name of the deceased assessee was only a technical defect which would be corrected under Sec.292B of the Act.*
- (v) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty levied of Rs.1,00,00,000/- under Sec.271E of the Act by observed that when the loan taken was assessed in the hands of the HUF, the penalty for repayment of such loan cannot be levied in the hands of the assessee i.e. Amritlal Patel (Individual) without appreciating the fact that the penalty was levied in respect of repayment of loan of Rs.1 Cr. and not in respect of cash loan of Rs.5 Cr.*
- (vi) *It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*
- (vii) *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of appeal.”*

2. Brief facts of the case are that the assessment in case of assessee/legal representative of assessee was completed under Section 143(3) r.w.s 153A of the Income Tax Act, 1961 (in short, the Act) on 30/12/2017. The Assessing Officer while passing the assessment order, initiated penalty under Section 271E of the Act for contravention of provisions of Section 269T of the Act. The Assessing Officer initiated the penalty under Section 271E of the Act by taking a view that the assessee has taken cash loan from Asharam T Harplani alias Asharam Bapu and his associates in past years. The assessee has repaid a loan of Rs. 1.00 crore on 08/03/2011 i.e. during the relevant assessment year. The Joint Commissioner of Income Tax (JCIT) after receipt of reference from Assessing Officer/DCIT on 22/02/2018, issued show cause notice to the assessee on 05/03/2018 as to why penalty under section 271E be not levied on the assessee. In response to show cause notice, the learned Authorised Representative (Id. AR) of the assessee filed his reply dated 29/08/2018. In the reply, the assessee stated that no addition is made in the assessment against the alleged repayment of loan in contravention of section 269S. No existence of loan has been found. The noting relating to repayment of Rs. 1.00 crore is found from the Asharam and there is no signature of assessee. No statement of assessee was recorded regarding such repayment. The reply of

assessee was not accepted by the Id. JCIT. The Id. JCIT held that the name of assessee appeared in the master ledger of assessee and balance was receivables Rs. 5.00 crores. The relevant portion of master ledger is scanned in para 7 of penalty order. On the basis of which, the Id. JCIT held that repayment of Rs. 1.00 crore was on account of loan repayment which was made in cash which attracts provisions of Section 271E r.w.s. 269T of the Act. The Id. JCIT accordingly levied penalty of Rs. 1.00 crore i.e. equal amount of loan repaid in cash.

3. Aggrieved by the order of penalty, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the Id. AR of the assessee filed detailed written submissions. The Id. AR in his submission stated that the assessee had died on 30/01/2017, copy of death certificate was filed. The assessment was completed in the name of legal heirs/ son of deceased late Jignesh Amritlal Patel. Copy of assessment was filed. The assessee stated that despite the fact the assessment was framed in the name of legal heirs on 30/12/2017, show cause notice proposing levy of penalty under Section 271E was issued in the name of deceased on 05/03/2018. The assessee stated that penalty order in the name of deceased person is *void ab initio* and liable to be quashed.
4. The Id. CIT(A) after considering the submission of assessee noted that the assessee has expired on 30/01/2017 whereas the penalty

order was passed on 30/08/2018. The assessment order under Section 143(3)/153A of the Act was passed on 30/12/2017 in the name of legal heirs of assessee. The notice was served in the name of dead person. In such cases, notice was to be issued and served on the legal heirs of the deceased assessee. Such notices issued in the name of dead person, is not curable even by applying provisions of Section 292B as has been held by the Hon'ble Bombay High Court in Sumit Balkrishna Gupta Vs ACIT 103 taxmann.com 188 (Bom) and by the Hon'ble Jurisdictional High Court in Vikram Singh Vs Union of India 401 ITR 302 and Hon'ble Delhi High Court in Rajendra Kumar Sehgal Vs ITO 101 taxmann.com 233. By referring the aforesaid decision, the Id. CIT(A) held that the penalty levied on deceased person is null and void.

5. The assessee also raised grounds on merit of the case, the Id. CIT(A) recorded such submission of assessee in para 7.1 of his order. In the submission, the Id. AR of the assessee submitted that in the year of search i.e. A.Y. 2016-17, the Assessing Officer made addition of Rs. 50.00 lacs under Section 69C alleging unexplained interest payment by assessee in respect of Rs. 5.00 crores received from Ashram of Asharam Bapu. The Assessing Officer also made protective addition of Rs. 15,17,100/- under Section 69A in respect of cash found from the residence of assessee. Both the additions were deleted by the Id. CIT(A) in his order dated 07/10/2019 by holding that the amount of

Rs. 5.00 crores were received by HUF of assessee and HUF earned Rs. 56.45 lacs as business income and Rs. 1.40 crore as interest income for A.Y. 2014-15 to 2016-17 which is already offered by HUF in Income Discloser Scheme-2016 (IDS-16) as a net income of Rs. 2.00 crores which is accepted by PCIT-1, Surat, thus, there is no question of making any addition in the individual hand of assessee. Copy of order of Id. CIT(A) dated 07/10/2019 was also filed. Copy of Form-4 issued by Id. PCIT in case of HUF of deceased assessee, accepting disclosure of income of Rs. 2.00 crore was also filed. On the basis of such fact, the Id. AR of the assessee submitted that from the above facts, it is clear that the alleged transaction of repayment of Rs. 1.00 crore in this year and subsequent acceptance of Rs. 5.00 crores from Ashram of Asharam Bapu pertains of HUF of assessee and not of assessee in his individual capacity and there is no question of levy of penalty in his individual capacity. Furthermore, the HUF of assessee has disclosed the said transaction under IDS-2016.

6. The Id. CIT(A) after considering the submission of assessee held that he has verified the submission of assessee regarding the taxing of the cash loans from Asharam Bapu Group. Out of Rs. 5.00 crores taken as cash loan, as found from the evidence seized during the course of search, the HUF of assessee offered Rs. 2.00 crores in IDS and balance of Rs. 3.30 crores were brought to tax under Section 69A in the hands of HUF of assessee in the assessment completed by

ITO, Ward 1(3)(1), Surat order dated 21/12/2019 for A.Y. 2017-18 under Section 143(3) of the Act. No addition of cash loan was made in the hand of individual assessee. When the loan was taken in the hand of HUF, the penalty for repayment of loan cannot be levied in the hands of assessee individual. Therefore, the penalty was also deleted on merit. Further aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

7. We have heard the submissions of the learned Senior departmental representative (Id. Sr. DR) for the revenue and the Id. AR of the assessee and have gone through the orders of the authorities below carefully. The Id. Sr. DR for the revenue submits that the representative of the assessee never informed about the death of assessee either at the time of issuance of show cause notice or during the penalty proceedings. Such fact was not brought to the notice of Id. JCIT, therefore, penalty was levied on the assessee. In para 6.1 of penalty order, it is clearly mentioned that repeated notice was issued and served and the Id. AR of the assessee sought adjournment instead of disclosing that the assessee has died.
8. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the assessment was passed against the legal heirs of assessee. The Id. AR as well as legal heirs of assessee informed the Assessing Officer about the death of assessee. Thus, assessment was passed in the name of

legal heirs of assessee. All such facts were available before the JCIT at the time of passing the penalty. The Id. AR submits that it is settled law that the order passed against the dead person is nullity and cannot be cured under any provisions of law. To support his submission, the Id. AR of the assessee relied upon the following case laws:

- (i) Urmilaben Anirudhhasinhji Jadeja Vs ITO (2020) 117 taxmann.com 504 (Guj)
- (ii) PCIT Vs Maruti Suzuki India Ltd 107 taxmann.com 375 (SC)
- (iii) CIT Vs S. Gowri 116 taxmann.com 764 (Mad.)
- (iv) Srikishan Agarwal Vs DCIT 88 taxmann.com 380 (Jai Trib).

In alternative submission, the Id. AR of the assessee submits that even on merit, no penalty was leviable against the assessee as the alleged transaction was not related to individual assessee rather relates to HUF of assessee. The Id. CIT(A) on appreciation of fact, deleted the penalty on merit as well. The Id. AR of the assessee submits that the grounds of appeal raised by the revenue has no force and the appeal of revenue is liable to be dismissed.

9. We have considered the rival contentions of both the parties and have gone through the orders of authorities below carefully. The Assessing Officer while passing the assessment order, initiated penalty under Section 271E of the Act for violation of provisions of Section 269T of the Act. The Assessing Officer initiated the penalty under Section 271E of the Act by taking a view that the assessee has

taken cash loan from Asharam Bapu and his associates in past. The assessee has repaid a loan of Rs. 1.00 crore on 08/03/2011 i.e. during the relevant assessment year under consideration. The Id. JCIT after receipt of reference from Assessing Officer/DCIT on 22/02/2018, issued show cause notice to the assessee on 05/03/2018. In response to show cause notice, the learned Authorised Representative (Id. AR) of the assessee filed his reply dated 29/08/2018. In the reply it was specifically submitted that nothing relating to repayment of Rs. 1.00 crore is found from assessee and there is no signature of assessee. No statement of assessee was recorded regarding such repayment. The reply of assessee was not accepted by the Id. JCIT. The Id. JCIT held that the name of assessee appeared in the master ledger of Asharam and balance was receivables Rs. 5.00 crores and on the basis of which the Id. JCIT held that repayment of Rs. 1.00 crore was on account of loan repayment which was made in cash which attracts provisions of Section 271E r.w.s. 269T of the Act. The Id. JCIT accordingly levied penalty of Rs. 1.00 crore i.e. equal amount of loan repaid in cash. The Id. CIT(A) deleted the penalty by taking a view that he has verified the submission of assessee regarding the taxing of the cash loans from Asharam Bapu Group. Out of Rs. 5.00 crores taken as cash loan, as found from the evidence seized during the course of search, the HUF of assessee offered Rs. 2.00 crores in IDS and

balance of Rs. 3.30 crores were brought to tax under Section 69A in the hands of HUF of assessee in the assessment completed by ITO, Ward 1(3)(1), Surat order dated 21/12/2019 for A.Y. 2017-18 under Section 143(3) of the Act. No addition of cash loan was made in the hand of individual assessee. When the loan was taken in the hand of HUF, the penalty for repayment of loan cannot be levied in the hands of assessee individual.

10. On legal issue the Id CIT(A) also held that assessment order under Section 143(3)/153A of the Act was passed on 30/12/2017 in the name of legal heirs of assessee. The notice of penalty was served in the name of dead person; no notice was served on the legal heirs of the deceased assessee. Such notices issued in the name of dead person, is not curable even by applying provisions of Section 292B as has been held by the Hon'ble Bombay High Court in Sumit Balkrishna Gupta Vs ACIT 103 taxmann.com 188 (Bom) and by the Hon'ble Jurisdictional High Court in Vikram Singh Vs Union of India 401 ITR 302 and Hon'ble Delhi High Court in Rajendra Kumar Sehgal Vs ITO 101 taxmann.com 233. By referring the aforesaid decision, the Id. CIT(A) held that the penalty levied on deceased person is null and void. We find that the Id CIT(A) adjudicated the issue against the revenue on legal as well as on factual issues. In our view the order passed by Id CIT(A) does not require any interference, which we affirm.

11. In the result, the grounds of appeal raised by the revenue is dismissed.

12. In the result, this appeal of the revenue is dismissed

Order pronounced in the open court on 30<sup>th</sup> January, 2023.

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

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 30/01/2023

*\*Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat