

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA Nos. 37 & 38/Jodh/2020
(ASSESSMENT YEARS- 2007-08)

Raman Lal Sharma Nr. Vishwakarma Mandir, Maliwara, Rajsamand	Vs	Joint Commissioner of Income Tax, Range-2, Udaipur.
(Appellant)		(Respondent)
PAN NO. CQFPS5289 G		

Assessee By	None
Revenue By	Ms Nidhi Nair, JCIT-DR
Date of hearing	18/01/2023
Date of Pronouncement	05/04/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

Both the appeals of the assessee are against two different orders of the learned Commissioner of Income Tax (Appeals)-1, Udaipur (herein after referred as “ CIT(A)”) both dated 25.04.2019 for the assessment years 2007-08 passed u/s 271D and 271E of the Income Tax Act respectively. Since both the appeals arise out of common set of facts, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. None appeared on behalf of the assessee however, the Bench decided to proceed the matter on merit based on the materials available on record. At the outset of hearing, the Bench observed that there is delay of 198 days in filing the appeal by the assessee for which the ld. AR of the assessee filed an application for condonation of delay with following prayers.

“ I HAVE RECEIVED THE ORDER OF Commissioner (Appeals), in case for assessment year 2007-08, I am village based person, I am small businessmen. Owing to family problem I could not connec with my Chartered Accountant when they called me, hence we could not communicate to our consultant for further appeal. Amy affidavit detailing the aforesaid facts and these may kindly be placed before the hon’ble Appellate Tribunal for condonation of the delay in submission of the appeal.”

3. During the course of hearing, the ld. DR has no objection to assessee’s application for condonation of delay and prayed that Court may decide the issue as deem fit and proper in the case.

4. We have considered the submission of the ld. DR as well the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 198 days has merit and we concur with the submission of the assessee. Thus the delay of 198 days in filing the appeal by the assessee is condoned in view of the decision of Hon’ble Supreme Court in the case of

Collector, land Acquisition vs. MSt. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. The grounds urged in **ITA No. 37/Jodh/2020** by the assessee read as under:-

“ 1. The ld. CIT(A) has erred in sustaining the order passed by ld. AO which is bad in law and bad on facts.

2.a The ld. CIT(A) has erred in confirming the penalty of Rs. 1,00,000/- u/s 271D. The penalty so sustained is bad in law and bad on facts.

b. The ld. CIT(A) has erred in upholding the action of ld. AO in which does not have any evidence to prove allegation on which we came reply i.e. the department failed to establishment condidness of the transaction towards accepting amount of Rs. 1,00,000/-. Where there is no proof penalty cannot be levied u/s 271D.

3. The penalty charged is bad in law and bad on facts.

4. The appellant prays for suitable costs.

5. The appellant crave liberty to add, amend, alter or modify any of the ground of appeal on or before its hearing before your honour.”

6. The grounds urged by the assessee in **ITA No. 38/Jodh/2020** read as under:-

“ 1. The ld. CIT(A) has erred in sustaining the order passed by ld. AO which is bad in law and bad on facts.

2.a The ld. CIT(A) has erred in confirming the penalty of Rs. 1,06,000/- u/s 271E. The penalty so sustained is bad in law and bad on facts.

b. The ld. CIT(A) has erred in upholding the action of ld. AO in which does not have any evidence to prove allegation on which we came reply i.e. the department failed to establishment condidness of the transaction towards accepting amount of Rs. 1,06,000/-. Where there is no proof penalty cannot be levied u/s 271D.

3. The penalty charged is bad in law and bad on facts.

4. The appellant prays for suitable costs.

5. The appellant crave liberty to add, amend, alter or modify any of the ground of appeal on or before its hearing before your honour.”

7. Briefly the facts of the case are that a search & seizure action was carried out in the case of Sh. Narendra Bagrecha wherein a dairy was seized. During Post Search Inquiry, Shri Narendra Bagrecha stated that he had given cash loan of Rs.1,00,000/- to the assessee. However, it was noticed that the loan agreement and security cheque were executed in the name of Sh. Sushil Jain. On the basis of above evidences, the AO initiated penalty proceedings u/s 271D of the Act in the hands of the assessee. Before the AO, the assessee submitted that the above said transaction is a trading transaction relating to purchase of marble. The AO, however, rejected the said submission of the assessee for want of corroborating evidences. Even though the assessee filed

an affidavit deposing therein his submissions, the AO rejected the same by stating that it was a self serving document and no cognizance can be placed to it. Accordingly, the AO held that the assessee has violated the provisions of Sec. 269SS while accepting the loan of Rs. 1,00,000/-. Accordingly, he imposed penalty of Rs.1.00 lakh u/s 271D of the Act. The Ld CIT(A) also confirmed the penalty so levied by the AO.

8. Shri Narendra Bagrecha had also stated that he received back a sum of Rs.1,06,000/- in cash towards repayment of loan with interest. Hence the AO levied penalty of Rs.1,06,000/- u/s 271E of the Act. The Ld CIT(A) also confirmed the same.

9. We heard ld. Sr. DR, who supported the orders passed by ld. CIT(A) and contended that the levy of penalty u/s 271D/271E of the Act should be sustained.

10. We noticed that the case of the assessee is that he has not taken any loan by way of cash. It is the submission that these payments were received and paid back in connection with trading transactions. We also notice that there was a middle man named Shri Sunil Jain between both the parties. Further, the impugned penalties have been levied on the basis of entries found in a diary and not in any books of accounts. In our considered view, the tax authorities have placed full reliance on the statement given by Shri

Narendra Bagrecha with regard to the entries found in the diary, where as the claim of the assessee that the above said money transactions were related to trading activities have not been further probed. We notice that the AO did not examine Shri Sunil Jain, who was found to be the middle man in the transactions. The tax authorities have not granted the opportunity of cross examination also to the assessee. Under these set of facts, we are of the view that the AO has levied the impugned penalties merely on suspicion and surmises and his action is not backed by any other credible material. Accordingly, we are of the view that the penalties levied u/s 271D and 271E of the Act in the hands of the assessee are liable to be deleted. Accordingly, we set aside both the orders passed by Ld CIT(A) and direct the AO to delete the impugned penalties levied u/s 271D and 271E of the Act in the hands of the assessee.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 05 /04/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench