

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.275 TO 278/Ind/2021
Assessment Years: 2013-14 to 2015-16

Shri Ravinder Shivhare, B-17, Ashok Vihar, Tansen Road Gwalior	<u>बनम/</u> Vs.	ACIT- Central Bhopal
(Appellant / assessee)		(Respondent / Revenue)
PAN: AVJPS 1342 K		
Appellant by	Shri Anil Kamal Garg, & Arpit Gaur, ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	17.11.2022 / 22.02.2023	
Date of Pronouncement	18.05.2023	

आदेश / O R D E R

Per B.M. Biyani, AM:

Feeling aggrieved by a consolidated appeal-order dated 09.09.2021 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**“Ld. CIT(A)”**], which in turn arises out of a consolidated penalty-order dated 27.09.2019 passed by learned Addl. CIT, Central Range, Bhopal [**“Ld. AO”**] u/s 271D & 271E of Income-tax Act, 1961 [**“the Act”**] for assessment-year [**“AY”**] 2013-14 to 2015-16, the assessee has filed these four appeals. Since these appeals emanate from a common penalty-order and common order of first-appellate authority and the issues involved are also identical, they were heard together and are being disposed of by this common order for convenience and clarity.

2. Heard the Ld. Representatives of both sides at length and case records perused.

3. Briefly stated the facts leading to present appeals are such that the assessee is engaged in the business of sale of liquor and assessed regularly by Income-tax Department. A search u/s 132 was conducted on 07.01.2016 upon assessee wherein two documents inventorised as “LPS-01-Page 135” and “LPS-02-Page 48” were seized. Based on “LPS-01-Page 135”, the AO framed a view that the assessee had taken/repaid cash-loans from/to Shri Laxmi Narayan Shivhare and based on “LPS-02-Page 48”, he formed a view that the assessee had taken/repaid cash-loans from/to other persons; that all these loans were in contravention of sections 269SS/269T which attracted penalties u/s 271D/271E for AY 2013-14 to 2015-16. Therefore, during the course of assessment-proceeding, Ld. AO issued show-cause notice dated 19.07.2018 to assessee, in response to which the assessee made a written-submission and stated that he has never carried out any loan transaction. Subsequently, the AO initiated penalty-proceeding on the same premise that the transactions mentioned in those documents represented cash loans taken/repaid by assessee in violation of section 269SS/269T; finally he imposed penalties u/s 271D & 271E vide order dated 27.09.2019 as under:

A.Y.	Penalty u/s 271D		Penalty u/s 271E	
	Transactions with Laxminarayan Shivhare	Transactions with other persons	Transactions with Laxminarayan Shivhare	Transactions with other persons
2013-14	23,00,000	--	--	--
2014-15	24,56,000	--	--	--
2015-16	11,00,000	48,32,000	35,43,000	--

4. Aggrieved, the assessee carried matter in first-appeal but could not succeed. Still aggrieved, the assessee has come in these appeals before us assailing the orders of lower authorities.

5. Thus, the controversy in these appeals relate to the penalties imposed by AO u/s 271D/271E in different assessment-years, as mentioned in the table given in foregoing para.

ITA No. 275/Ind/2021 – AY 2013-14 – Penalty u/s 271D:

ITA No. 276/Ind/2021 – AY 2014-15 – Penalty u/s 271D:

6. Ld. AR drew our attention to penalty-order and submitted that the AO has imposed penalty u/s 271D of Rs. 23,00,000/- and Rs. 24,56,000/- in AY 2013-14 and 2014-15 respectively. These penalties are imposed on the basis of “LPS-01-Page 135” by alleging that the assessee had taken cash-loans from Shri Laxmi Narayan Shivhare. Ld. AR submitted that the search was conducted on “Shivhare Group” including assessee as well as the person named Shri Laxmi Narayan Shivhare. Thereafter, all cases including that of assessee as well as Laxmi Narayan Shivhare were centralized and the assessments were framed by the same AO. Ld. AR pointed out that although the AO alleged that the assessee had taken cash-loans from Laxmi Narayan Shivhare and accordingly invoked section 269SS in the hands of assessee but no enquiry at all was made from Laxmi Narayan Shivhare. Ld. AR submitted that when the case of Laxmi Narayan Shivhare was very much assessed by same AO, why didn't he ascertain the factual position from Laxmi Narayan Shivhare? Not only that, Ld. AR went on submitting that if the AO believed that Laxmi Narayan Shivhare had given cash-loans to assessee, it was legally incumbent upon him to examine as to whether Laxmi Narayan Shivhare had really made loans to assessee or not and if yes, then from explainable sources or unexplainable sources? Further, in the event it is found that Shri Laxmi Narayan Shivhare has made loans out of unexplainable sources, the AO ought to have made necessary additions in his hands u/s 69/69A/69B of the act. Ld. AR strongly contended that no

such exercise has been done by AO. He submitted that the AO has just drawn one-sided, self-made conclusion that the assessee has taken cash-loans from Laxmi Narayan Shivhare. Without prejudice, Ld. AR also submitted that the entire “LPS-01-Page 135” does not even demonstrate that there were transactions of cash-loans done by assessee. In fact, there are transactions of Demand-Draft, Cheques, Plots, lands, etc. noted in the said document and at the end of document, there is a mention of deposit of Rs. 33,13,000/- at the show-room. How these transactions, Ld. AR argued, demonstrate that the assessee has taken/repaid loans? Ld. AR submitted that the inference taken by AO that the assessee has taken/repaid loan is totally vague and baseless. With these submissions, Ld. AR strongly contended that the AO has derived unsustainable conclusion and thereby visited the assessee with penalty, which must be deleted.

7. Per contra, Ld. DR vehemently supported the orders of lower-authorities.

8. We have considered rival submissions of both sides and perused the material held on record. After a careful consideration, we find strong merit in the contentions raised by Ld. AR. *Firstly*, we take note of his pleading that despite a simultaneous search on the assessee as well as Shri Laxmi Narayan and despite centralization of assessments of assessee and Shri Laxmi Narayan in the same AO, the Ld. AO has not made any enquiry whatsoever *qua* the alleged transactions from Laxmi Narayan Shivhare. We agree with the submission of Ld. AR that when the case of Laxmi Narayan Shivhare was very much assessed by same AO, the AO ought to have examined from Laxmi Narayan Shivhare as to whether he had really made loans to assessee or not and if yes, then whether he had explainable sources or not? Before us, Ld. AR has made a clear assertion that no such exercise was done by AO and that AO has not made any addition u/s 69/69A/69B in the hands of Laxmi Narayan Shivhare. *Secondly*, on a prima facie perusal of “LPS-01-Page 135”, we find that there are transactions of Demand-Draft,

Cheques, Plots, lands, etc. noted in the said document and at the end of document, there is a mention of deposit of Rs. 33,13,000/- at the showroom. Apparently, these transactions do not speak of cash-loans having been taken/repaid by assessee from Laxmi Narayan Shivhare. Therefore, the contentions raised by AR are very much meritorious which Ld. DR could not contradict or rebut. In these circumstances, we are unable to sustain the view taken by lower-authorities. We are, therefore, persuaded to delete the penalty imposed by AO u/s 271D in AY 2013-14 and 2014-15. The assessee succeeds in its appeals.

ITA No. 277/Ind/2021 – AY 2015-16 – Penalty u/s 271D:

9. Ld. AR drew our attention to penalty-order and submitted that the AO has imposed penalty u/s 271D of Rs. 59,32,000/- which has two parts, namely (i) Penalty of Rs. 11,00,000/- imposed on the basis of “LPS-01-Page 135” by alleging that the assessee had taken cash-loans from Shri Laxmi Narayan Shivhare; and (ii) Penalty of Rs. 48,32,000/- on the basis of “LPS-02-Page 48” by alleging that the assessee had taken cash-loans from other persons.

10. Regarding the penalty of Rs. 11,00,000/- *qua* the alleged loans taken from Laxmi Narayan Shivhare inferred on the basis of “LPS-01-Page 135”, the factual position is same as discussed by us in foregoing paragraphs while adjudicating appeals of AY 2013-14 and 2014-15. Therefore, the same view as taken by us therein, shall apply *mutadis mutandis*. Applying same, we delete the penalty of Rs. 11,00,000/-.

11. Regarding the penalty of Rs. 48,32,000/- *qua* the alleged loans taken from other persons, Ld. AR drew our attention to the seized document “LPS-02-Page 48”. Ld. AR submitted that the said document nowhere mentions that the assessee has taken any loan, it is a mere presumption and conjecture of AO that the notings in document represent cash-loans taken by assessee. He submitted that the assessee is engaged in liquor business

and sometimes lump-sum cash is received/brought from shops through/with the help of different persons. He emphasized that during the course of proceedings before AO, the assessee has explained this fact of receipts from shops but the AO has rejected assessee's explanation as unsatisfactory and made a far-fetched inference that the assessee has taken cash-loans.

11.1 Ld. AR further submitted that if at all the AO believed that the assessee had taken loans from different persons, he must have made enquiries from those very persons. Moreover, it was legally incumbent upon the AO to call those persons to explain the sources of loans having been given to assessee and make necessary additions in their respective hands u/s 69/69A/69B of the act as well as interest-income if the sources are found unexplainable. But the AO has not carried out any such exercise and simply alleged the assessee to have taken cash-loans.

11.2 Ld. AR also submitted that although a search was also conducted upon assessee wherein extensive investigation was carried out but not a single document, paper or slip was found by which it could have been observed that the assessee was indulged in accepting cash loans from anyone. Had the assessee indulged in taking cash loans, at least some piece of evidence like promissory note, cheque, paper, slip, agreement, etc. would have been found but there was no iota of any such evidence. Ld. AR also pointed out that the AO has not made any addition on account of interest payment u/s 69C while framing assessments of assessee u/s 153A. Ld. AR posed a question – How the assessee can take loans without any payment of interest?

11.3 Lastly, Ld. AR submitted that although a search u/s 132 was also conducted upon assessee but the assessee never claimed to have taken loans for explaining source of any cash, jewellery, asset, investment found during search or any entry in the books of account in any of the

assessment-years involved. When section 269SS and 269T were introduced through Finance Act, 1984, the CBDT issued Circular No. 387 dated 07.06.1984 explaining the objective of these sections as under:

“Prohibition against taking or accepting certain loans and deposits in cash:

32.1 Unaccounted cash found in the course of searches carried out by the Income-tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits and taxpayers are also able to get confirmatory letters from such persons in support of their explanation.

32.2 With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS in the Income-tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. 10,000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs. 10,000 or more. The prohibition will also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more.”

Ld. AR contended that the legislative intent of bringing section 269SS/269T as explained by CBDT clearly encompasses the assessee’s case. Therefore also, the lower-authorities are not justified in imposing/confirming the penalties.

11.4 With these submissions, Ld. AR argued that the lower authorities have wrongly taken conclusions against assessee and imposed penalty which is not sustainable.

11.5 Per contra, Ld. DR defended the revenue's case and prayed for upholding of penalty.

11.6 We have considered rival arguments of both sides and perused the orders of lower authorities including the seized-document. *Firstly*, we find that the assessee being in liquor business, the possibility of bringing cash from shops cannot be ruled out. *Secondly*, we find merit in AR's submission that if the AO really believed that the assessee had taken loans from different persons, the AO ought to have made enquiries from those persons and examined whether they had explainable sources of giving loans to assessee or not. Further, in absence of explainable sources, the AO must have made necessary additions in their hands u/s 69/69A/69B and also assessed interest earned by them from assessee. Needless to mention that the enquiries from those persons would have unearthed the truth. But the AO has not carried out any such exercise. *Thirdly*, we also find that although a search was also conducted upon assessee but there is no single document, paper, slip, promissory note, agreement, etc. found by authorities to corroborate the indulgence of assessee in taking loans. It is also noteworthy that the AO has not made any addition on account of payment of unaccounted interest by assessee. Thus, we find that the AO's action is based on mere surmises and conjectures without having any valid, positive, cogent or corroborative evidence. *Fourthly*, the Ld. AR has also relied upon CBDT Circular No. 387 dated 07.06.1984 to advance an argument that the intention behind introduction of section 269SS/269T as explained by CBDT clearly encapsulates, rather guards, the assessee's case. On perusal of Circular, we find the opening para itself "*Unaccounted cash found in the course of searches carried out by the Income-tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons*". It conveys that the provisions of section 269SS/269T would trigger where the assessee explains the source of cash or any other asset found during search as representing the cash loans taken from various persons. Although we do understand that the intention behind introduction of section 269SS/269T as clarified in this

Circular cannot obliterate the applicability of sections 269SS/269T which are statutory provisions once enacted, but in numerous decisions this clarification has been taken as an aid for interpreting the law and it can be certainly used, as we believe, in the present case of assessee where the situation directly fits in the circular. As a matter of fact, Ld. AR has made a clear assertion standing at the Bar that the assessee has not explained the source of any cash, jewellery, asset, investment, etc. found during search or any entry in the books of account in any of the assessment-years involved pursuant to search as sourced from alleged cash loans taken by assessee. Had the assessee declared the source of any cash, jewellery, asset, investment etc. found during search as acquired by utilizing loans taken in cash, the AO would have been justified to impose penalty u/s 269SS/269T. But the situation is just opposite. In the present case, there is no such declaration by assessee. Therefore, going by Circular also, one can conclude that the sections 269SS/269T and consequently sections 271D/271E can't be applied in present case. Therefore, we are persuaded to hold that the AO has not been successful in making out a case of loan-transactions as alleged. Consequently, we are inclined to hold that the conclusion taken by revenue-authorities is unsustainable; hence we delete the penalty of Rs. 48,32,000/- imposed upon assessee.

12. In view of above discussions, we hold that the entire penalty of Rs. 59,32,000/- [Rs. 11,00,000 (+) Rs. 48,32,000] imposed/confirmed by revenue-authorities u/s 271D is not sustainable. Therefore, we delete the same. The assessee succeeds in this appeal.

ITA No. 278/Ind/2021 – AY 2015-16 – Penalty u/s 271E:

13. In this appeal, the assessee has challenged the imposition of penalty of Rs. 35,43,000/- for alleged repayment of loan to Shri Laxmi Narayan Shivhare.

14. This penalty is *qua* the alleged cash-repayments of loans made to Laxmi Narayan Shivhare inferred on the basis of "LPS-01-Page 135". We have already analysed the factual position in this regard in foregoing paragraphs while adjudicating appeals of AY 2013-14 and 2014-15. Therefore, the same view as taken by us therein, shall apply *mutadis mutandis*. Accordingly, the penalty of Rs. 35,43,000/- imposed u/s 271E is also deleted. The assessee succeeds in this appeal too.

15. Resultantly, all these appeals of assessee are allowed.

Order pronounced in the open court on 18/05/2023.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 18.05.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	11.05.2023
2.	Date of typing & draft order placed before the Dictating Member	11.05.2023
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	11.05.2023
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	