

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. 262/Ind/2021
Assessment Year: 2016-17

Shri Suresh Chand Shivhare 31, Saket Nagar, Tansen Road, Gwalior	<u>बनम/</u> Vs.	Addl. CIT, Central Range, Gwalior
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ARQPS 6023 C		
Appellant by	Shri Anil Kamal Garg & Arpit Gaur ARs	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	22.02.2023	
Date of Pronouncement	18.05.2023	

आदेश / O R D E R

Per B.M. Biyani, AM:

Feeling aggrieved by appeal-order dated 08.09.2021 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**Ld. CIT(A)**], which in turn arises out of a penalty-order dated 27.09.2019 passed by learned Addl. CIT, Central Range, Bhopal [**Ld. AO**] u/s 271D of Income-tax Act, 1961 [**the Act**] for assessment-year [**AY**] 2016-17, the assessee has filed this appeal of following grounds:

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming penalty of Rs. 12,00,000/- on account of cash loan received which is illegal, unjustified and bad in law.

2. On the facts and circumstances, the order of the Ld. CIT(A) is illegal, unjustified and bad in law.”

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

3. The registry has informed that this appeal has been filed after a delay of 13 days and therefore time-barred. Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay in fact.

4. Briefly stated the facts leading to present appeal are such that a search u/s 132 was conducted on 07.01.2016 upon assessee wherein a documents inventorised as "LPS-01-Page 29" was seized which is scanned on Page No. 2 of penalty-order. Based on this document, Ld. AO framed a view that the assessee had taken a loan of Rs. 12,00,000/- in cash from one Raju Bhai in contravention of section 269SS which attracted penalty u/s 271D. Therefore, during the course of assessment-proceeding, Ld. AO issued show-cause notice dated 19.07.2018 to assessee to explain the transaction, in response to which the assessee made a written-submission on 30.07.2018 but the AO was not satisfied. Subsequently, the AO initiated penalty-proceeding wherein Shri Gajendra Jain, authorized representative of assessee, filed a reply on 11.09.2019 contending that the assessee had already filed reply in response to show-cause notice dated 19.07.2018 during assessment-proceeding itself and thereafter the assessee presumed that the AO had accepted his reply. However, the AO was again not convinced with this reply of authorized representative of assessee. Finally, the AO imposed penalty of Rs. 12,00,000/- u/s 271D holding that the assessee had taken a cash loan from Raju Bhai.

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

6. Learned AR representing the assessee carried us to the penalty-order and raised several objections, namely (i) referring to the seized-document scanned by AO, he argued that the said document nowhere reveals that assessee had taken loan from Raju Bhai; (ii) that no evidence was found during search which could suggest corroboration for taking loan, and (iii) even if the AO developed an understanding, which though is not true at all, that the assessee had taken loan from Raju Bhai, at least he could have made enquiry from Raju Bhai to find the true state of affair but the AO has not done any such exercise at all. Ld. AR submitted that the penalty proceeding is a quasi-criminal proceeding and there is a heavy burden upon the AO to establish beyond doubt that the assessee has in fact committed the alleged default. Ld. AR drew our specific attention to Para No. 3.4 of penalty-order where the AO has stated *“The only possible conclusion, is that the transaction did transpire and the assessee did receive Rs. 12,00,000/- in cash from Raju Bhai during F.Y. 2015-16 relevant to A.Y. 2016-17”*. This, according to Ld. AR, clearly shows that the AO has made a possible or probable inference only but there is no conclusive finding. With these submissions, Ld. AR contended that the AO has taken a self-made, baseless and unsustainable conclusion that the assessee took loan and thereby saddled the assessee with a heavy penalty as high as Rs. 12,00,000/-. Ld. AR prayed for deletion of penalty.

7. Per contra, Ld. DR representing the revenue submitted that the impugned-document was seized from assessee and the assessee has not disowned the same. Further, the assessee could not explain the nature of transaction recorded therein to the satisfaction of AO; therefore the AO was justified in deriving a conclusion that the assessee had taken loan. Ld. DR

defended the orders of lower-authorities and prayed that the penalty should be upheld.

8. We have considered rival submissions made strongly by representatives of both sides for and against the penalty-order. We have also perused the orders of lower-authorities. First of all, we take note that the impugned-document was seized from assessee during the course of search u/s 132; therefore having regard to presumption u/s 132(4A) and the fact that the assessee has not dis-owned the document, we find merit in the contention of Ld. DR that it was the onus of assessee to explain the document. However, on perusal of penalty-order, we also find that the AO has himself mentioned in Para No. 3.1 that the assessee made a written-submission on 30.07.2018. Thus, it is an undisputed fact that there was a submission by assessee but, however, it could not impress the AO. But the penalty-order does not reveal an apt consideration of assessee's submission by AO. We also find merit in the submission of Ld. AR that at least the AO could have confronted Raju Bhai in the matter so that truth could have been ascertained without any doubt. Admittedly, the AO has not taken any such step. Therefore, in this scenario we think it more appropriate to remand this issue back to AO with a direction to re-consider the submissions of assessee aptly and also confront Raju Bhai in case he still forms an adverse view and thereafter take a final call on the issue. The assessee shall be free to make all submissions and evidences before AO. Needless to add that the AO shall afford necessary hearings to assessee for making such submissions and the assessee shall co-operate in the proceedings including production of Raju Bhai, if required by AO. The AO would not be influenced by his earlier order.

9. Resultantly, this appeal of assessee is allowed for statistical purpose in terms indicated above.

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

Sd/-

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

(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	11.5.23
2.	Date of typing & draft order placed before the Dictating Member	11.5.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	11.5.23
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	