

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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 364 to 366/Ind/2022
(Assessment Years:2008-09 & 2009-10)

Shri Umakant Sharma 24, Mig Housing Board Colony Jhabua	Vs.	JCIT Ratlam
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AUNPS 2481 G		
Assessee by	Shri Ram Gilda AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.05.2023	
Date of Pronouncement	19.07.2023	

O R D E R

Per Vijay Pal Rao, JM:

These three appeals by the assessee are directed against three separate orders of Commissioner of Income Tax(Appeal) National Faceless Appeal Centre, Delhi dated 27.09.2022 arising from penalty order passed u/s 271D, 271E & 271D of the Act for Assessment years 2008-09 & 2009-10 respectively.

2. For A.Y.2008-09 the assessee has raised following grounds of appeal:

“1.That the authorities below have grossly erred in levying and sustaining penalty of Rs.9,00,000/- U/s 271E of the Act without considering the facts and circumstances of the case.

2. That the penalty levied of Rs.9,00,000/- U/s 271E is illegal, wrong and bad-in-law.

3.That the appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal on or before the hearing of appeal..”

3. The assessee is an individual and he did not file return of income for the year under consideration. There was a search and seizure action in case of M/s. S. R. Ferro Alloys Group. During the course of search and seizure certain documents were impounded from Shri Ramesh Chand Upadhyaya showing the cash loan given to various persons including assessee during the F.Y.2007-08 to 2010-11. The DCIT(Central), Bhopal vide letter dated 09.10.2014 along with appraisal report in case M/s. S.R. Ferro Group intimate, ITO-2, Ratlam having jurisdiction of Shri Ramesh Chand Upadhyaya regarding the said documents and transactions. The said report was then transferred to the ITO, Jhabua who has completed the assessment u/s 143(3) r.w.s. 147 in case of Shri Ramesh Chand Upadhyaya on 15.03.2016 for A.Y.2008-09. The ITO, Jhabua noted that during the year under consideration the assessee has received cash loan from Shri Ramesh Chand Upadhyaya which is in contravention of section 269SS of the Act and accordingly a penalty proposal was sent to the JCIT Ratlam for imposing of penalty u/s 271D of the Act. Consequently, a penalty u/s 271D was levied vide order dated 23.1.2017 equivalent to the cash loan amount of Rs.6 lacs. The assessee challenged the order of penalty u/s 271D before the Ld. CIT(A) and raised the issue of validity of the penalty order on the ground of limitation as well as in absence of the assessment order or proceedings in the case of assessee. The Ld. CIT(A) rejected the objections raised by the assessee and confirmed the penalty levied u/s 271D of the Act.

4. Before the Tribunal the Ld. AR of the assessee has submitted that the assessee is having small salary income which is below taxable limit, therefore the assessee did not file any return of income for year under consideration. He has further submitted that due to low income of the assessee the assessee was not eligible for any bank loan whereas the

assessee was to purchase a house and therefore, the assessee taken loan in question. He has further submitted that the assessee has taken loan of Rs.6 lacs for A.Y.2008-09 & Rs.4 lacs during the assessment year 2009-10 and the same was repaid by the assessee during A.Y.2009-10 itself. He has submitted that the initiation of the penalty proceedings u/s 271D & 271E was invalid as there was no satisfaction recorded by the AO in the case of assessee or in the case of Shri Ramesh Chand Upadhya. He has further submitted that there is an inordinate delay in levying penalty u/s 271D and 271E of the Act as the same was levied in the year 2017 whereas the transaction of cash loan and repayment of the same pertains to A.Y.2008-09 & 2009-10 respectively.

5. Ld. AR has relied upon the judgment of Hon'ble Supreme Court in the case of *CIT vs. Jain Laxmi Rice Mills* 379 ITR 521, the judgment of Hon'ble Allahabad High Court in case of *Mohd. Atiq vs Income-Tax Officer*, 46 ITR 452 and in case of *Income-Tax Officer vs Bisheshwar Lal* 76 ITR 653 as well as in case of *CIT vs. Padampat Singhaning (HUF)* 280 ITR 14. He has also relied upon the order of the Ahmedabad Bench of the Tribunal dated 11.05.2022 in case of *Vijayaben G. Zalavadia vs. JCIT in ITANos.458 to 463/Ahd/2020*.

6. Ld. AR has further submitted that the assessee was having a reasonable cause for taking the loan in cash and repayment of the same in cash. As the assessee has taken this loan for purchase of house because bank loan was not possible for the assessee due to meager salary income of the assessee, therefore, when the transactions is genuine and not in the nature of avoiding tax then reasons explained by the assessee are reasonable and *bona fide* and therefore, in view of the provisions of section 273B no penalty shall be imposable on the assessee for any failure or default to comply with the provisions of section 269SS and 269TT.

7. On the other hand, Ld. DR has submitted that the provisions of section 271D & 271E are attracted for violation of provision of section 269SS and 269TT of the Act respectively. The levy of penalty under these

provisions is not depending on the outcome of the assessment order. Therefore, there is no requirement of the assessment proceedings in imposing the provision u/s 271D & 271E of the Act. He has relied upon the orders of the authorities below.

8. We have considered rival submissions and carefully perused the relevant material on record. There is no dispute that the assessee has not filed any return of income for the assessment year under consideration. The penalty u/s 271D of the Act has been levied on 23.01.2017 which is after 8 years from the end of the assessment year under consideration. The limitation for the penalty levied under chapter XXI has been provided in section 275 of the Act which reads as under:

“275. ¹ Bar of limitation for imposing penalties

(1)²] No order imposing a penalty under this Chapter shall be passed-

(a)³ in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of⁴ the Deputy Commissioner (Appeals) or] the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

[Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the "[Principal Chief Commissioner or] Chief Commissioner or "[Principal Commissioner or] Commissioner, whichever is later

(b) in a case where the relevant assessment or other order is the subject- matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.]

(IA) In a case where the relevant assessment or other order is the subject- matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "[Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264: Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed-

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "[Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed; Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section]

2. The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989 .]² Explanation.- In computing the period of limitation for the purposes of this section,-

(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(ii) any period during which the immunity granted under section 245H remained in force; and

(iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.]]”

9. The limitation for passing the order imposing penalty under chapter- XXI has been provided by considering all possible situation where the assessment order or other order is subject matter of appeal of the order is revised under section 263 or assessment order or other orders are subject matter of appeal before the Hon’ble High Court or Hon’ble Supreme Court. Thus, it is clear that section 275, pre supposes the existence of assessment proceedings/revision proceedings or appeal proceedings arising from the assessment order or revision order and the limitation is provided as per outcome of these proceedings. In absence of assessment in the case of the assessee the initiation of penalty is not valid and further when the satisfaction for initiation of the penalty on the part of the AO is absent in the case of the assessee then the penalty levied u/s 271D is not valid. The Hon’ble Supreme Court in case of *CIT vs. Jain Laxmi Rice Mills (supra)* has held as under:

“The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding Under Sec. 271E would also not survive. This, according to us, is the correct proposition of law stated by the High Court in the impugned order.

As pointed out above, insofar as, fresh assessment order is concerned there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, Insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied.”

10. Thus, the Hon’ble Supreme Court has affirmed the view of the Hon’ble High Court that in absence of satisfaction recorded regarding the penalty proceedings u/s 271E of the Act the order of levy of penalty is not valid. The Ahmedabad Bench of the Tribunal in case of *Vijayaben G. Zalavadia vs. JCIT (supra)* has considered an identical issue as under:

“6. We have heard the respective parties and also perused the relevant materials available on record.

7. We find that on the identical set of facts the Punjab and Haryana High Court was pleased observe the following while upholding quashing of penalty by the Tribunal:

“3. We have heard learned counsel for the appellant.

4. The only point for consideration in this appeal is whether the assessee had contravened the provisions of Section 269T of the Act by making repayment of loan/deposits of Smt. Kusum Lata Thakral, through account payee cheque or account payee drafts to M/s. Babyloan Builders Pvt. Ltd., Gurgaon and, therefore, penalty under Section 271E was leviable.

*5. The Assessing Officer had levied the penalty amounting to Rs. 11,02,6107- which has been deleted by the Tribunal. The Tribunal while deleting the penalty recorded that the return of the assessee was processed as on 31.12.2003 and the notice u/s. 274 read with section 271E of the Act was issued on 12.06.2007. Such notice was issued when there was no proceedings pending before the Assessing Officer. Relying upon Delhi High Court judgment in *CIT v. Standard Brands Ltd.* [20061 285 ITR 295/155 Taxman 383, the Tribunal further observed that action for penalty may be permissible only after regular assessment has been framed and since no regular assessment order had been passed in this case, the recourse to penalty proceedings under Section 271E were not justified. The findings recorded by the Tribunal read thus:-*

"Having heard the parties and having perused the material on record, we find the grievance of the assessee to be correct. In this case, the return of the assessee was processed u/s. 143(l)(a) of the Income-tax Act, on 31.12.2003. Notice u/s. 274 read with 271E of the Act was

issued to the assessee on 12.06,2007. It being a case of processing the return of income, there is no finding in the AO's order with regard to the applicability or otherwise of section 269T of the IT Act to the assessee's case. It was within the purview of the AO to bring the assessee's case to scrutiny and to make regular assessment u/s. 143(3) of the Act. It was also within the power of the AO at the appropriate stage to initiate proceedings u/s. 147 of the Act against the assessee. No such action was taken. Rather, the penalty was imposed on the basis of the finding in the case of assessee's wife."

6. No error or perversity could be shown in the aforesaid findings recorded by the Tribunal. Moreover, the assessee had taken a plea before the Assessing Officer that there was a reasonable cause for the assessee to have made direct payment of Rs. 14,02,600/- to M/s. Babyloan Builders Private Ltd., Gurgaon. It was pleaded that some of the repayments made by the assessee were inter company transfer for group housing and purchase of flat and at times payments were made after closure of banking hours. It was further submitted that the payments made were genuine and no tax evasion was involved and the default, if any, was of technical nature. The explanation being plausible one, it cannot be said that there was no reasonable cause within the meaning of Section 273B of the Act. No substantial question of law arises in this appeal.

8. We find substances in the submissions made by the Ld. A.R. particularly after considering the order passed by the Hon'ble Punjab and Haryana High Court as cited hereinabove. In fact, on the identical set of facts the penalty under Section 271E was deleted by the Tribunal and further upheld by the Hon'ble High Court. 9. Having regard to the facts and circumstances of the case and the ratio laid down in the order passed by the Punjab and Haryana High Court we do not hesitate to hold that the impugned penalty under Section 271E is not permissible in the absence of regular assessment framed against the assessee by the Revenue. Hence, the same is not found to be sustainable in the eye of law and, thus, quashed. The appeal preferred by the assessee is, therefore, allowed."

11. Therefore, it is pre-requisite condition that the initiation of penalty 271D/271E of the Act, there must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee. Accordingly in the facts and circumstances of the case and following the judgment of Hon'ble Supreme Court as well as Coordinate Bench of the Tribunal in case of *Vijayaben G. Zalavadia vs. JCIT (supra)*, we hold that the penalty levied u/s 271D of the Act without any

assessment proceedings in the case of the assessee is not valid and liable to be quashed. We order accordingly.

For A.Y. 2009-10 under section 271D & 271E

12. There are two penalty orders passed u/s 271D & 271E of the Act. The facts and circumstances for levy of the penalty u/s 271D of the Act are identical for A.Y. 2008-09 as the assessee has taken loan of Rs.4 lac in cash during this year and also repaid the said loan. Further there is no return of income on behalf of the assessee and there was no initiation of assessment proceedings on behalf of the AO and only initiation of the penalty proceedings u/s 271D & 271E of the Act without any assessment proceedings as well as recording of satisfaction are not valid. Accordingly in view of our findings on this issue for A.Y.2008-09 the penalty levied u/s 271D as well as 271E of the Act for A.Y. 2009-10 is not valid and liable to be quashed.

13. In the result, appeal for A.Y.2008-09 u/s 271D & appeals for A.Y. 2009-10 u/s 271D & 271E are allowed.

Order in pronounced in Open Court	19 / 07/2023
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Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 19 .07.2023

Patel/Sr. PS

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

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

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