

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

VIRTUAL HEARING

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 91& 92/Jodh/2022
(ASSESSMENT YEAR- 2016-17)**

Jagmeet Singh S/o Sh. Kashmeer Singh, Ward No. 23, Tibbi	Vs	JCIT, Range-02, Bikaner
(Appellant)		(Respondent)
PAN NO. FFPPS 0489 A		

Assessee By	Sh. Rajendra Jain, Adv.
Revenue By	Sh. S. M. Joshi, JCIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	31/07/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are two appeals filed by the assessee and is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as (NFAC)] dated 06.05.2022 for the Assessment Years 2016-17, which in turn arise out of a penalty order passed by JCIT, Range-02, Bikaner passed u/s. 271D & 271E of the

Income Tax Act, 1961 [here in after referred to act "Act"] on 26.03.2019.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Sh. Jagmeet Singh in ITA No. 91/Jodh/2022 for A. Y. 2016-17 and this case is taken as lead case. In this appeal the assessee has raised following grounds:-

"1. That on the facts and in the circumstances of the case, the order passed by the CIT(A)NFAC is bad in law & bad in facts.

2. That on the facts and in the circumstances of the case, the CIT(A)NFAC grossly erred in confirming the penalty of Rs. 7,50,000/- u/s 271D of the Act.

3. That on the facts and in the circumstances of the case, the CIT(A)NFAC grossly erred in upholding the finding recorded by Id. AO in respect of imposition of penalty u/s 271D of the Act.

4. That on the facts and in the circumstances of the case, the CIT(A)NFAC grossly erred in violation of principle of natural justice.

5. That on the facts and in the circumstances of the case, the CIT(A)NFAC ought to have deleted the penalty imposed by the Id. AO.

9. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

10. The petitioner prays for justice & relief."

3. The fact as culled out from the records is that a show cause notice u/s 271D & 271E was issued to the assessee while requesting the assessee to furnish the evidence/documents/books/explanation of

which he may rely upon in this regard. The notice was duly served upon the assessee through Assessing Officer on 09/02/2019 by JCIT and date of compliance was fixed on 01/03/2019. Thus, sufficient time & opportunity was given to the assessee. In response, in the late evening of 28.02.2019 (7 PM), there was an e-mail from CA Rakesh Gupta (A/R of the assessee) requesting to allow 15 days more time to file reply of show cause notice. In the interest of justice, 15 days time was allowed to the assessee and, before taking any action, this office waited for not only 15 days but also for 15 working days but there has been no compliance by the assessee till date i.e. even after 15 working days. Since there was no compliance and it was noted that the assessee has taken loan in cash and repaid in cash therefore, proceeding was initiated u/s. 271D & E of the Act and ultimately passed the order on 26.03.2019 levying penalty of Rs. 7,50,000/- u/s. 271D of the Act and Rs. 6,00,000/- u/s. 271E of the Act.

4. Aggrieved from the order of the JCIT, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4. During the course of the appellate proceedings, notices u/s 250 were issued to the appellant through the e-proceedings facility in the registered e-filing account on 17.12.2021, 17.02.2022, 09.03.2022, 28.03.2022 and 18.04.2022 fixing the dates of compliance as 03.01.2022, 04.03.2022, 24.03.2022, 12.04.2022 and 03.05.2022. However, the appellant did not respond to any of the said five notices. Hence, having regard to the Grounds of appeal, the appeal is disposed off on merits as under-

Ground No. 1 and 2

Levy of Penalty u/s 271D

5. In these grounds of appeal, the appellant has disputed the action of the JCIT in levying penalty of Rs.7,50,000/- u/s 271D of the Act for violation of provisions of section 269SS of the Act.

6. In the grounds of appeal, the appellant has advanced general contentions that the penalty order is bad in law and the AO has erred in levying penalty u/s 271D. The appellant did not put forth any specific legal or factual contention in the grounds of appeal. During the course of the appellate proceedings, the appellant did not furnish any contentions in support of the grounds of appeal, despite affording him five opportunities as per the details furnished in paragraph 4 above. In the absence of furnishing specific arguments by the appellant against the levy of penalty accompanied by relevant factual submissions and supported by documentary evidence. I find that there is no reason to interfere with the order passed by the JCIT levying penalty u/s 271D. Hence, the penalty of Rs. 7,50,000/- levied u/s 271D of the Act for the default of the appellant in accepting loans in cash in violation of the provisions of section 269SS is hereby upheld. These grounds of appeal are accordingly dismissed.”

5. As it is evident the assessee has not submitted before JCIT and even before Id. CIT(A) and Id. AR appearing on behalf of the assessee that looking to the nature of the assessee he will be able to explain the nature of transaction and therefore, he prayed one more chance

before the Id. JCIT and present the correct fact and the matter may be decided on merit.

6. The Id DR is heard who has relied on the findings of the lower authorities and submitted that both the authority has given sufficient time to represent the case and therefore, now thing remain to presented by the assessee.

7. We have heard the rival contentions and perused the material placed on record. The Bench noted that the order of Id. CIT(A) and penalty order passed by the JCIT both are ex-party without hearing the assessee on merits and the assessee has not filed any details on merits. The Id. AR of the assessee submitted that the statement of the assessee was recorded wherein he has categorically explained about the source of money and the transactions between the assessee and LLP where he is partner as regards non-compliance before the Id. CIT(A), the assessee stated that the notice were issued in Corona Period in respect of the penalty proceedings before JCIT only one notice was issued for which the date of compliance on fixed on 01.03.2019 but on late evening 28.02.2019 and e-mail was received

from the assessee seeking time for 15 days which was allowed but the assessee has not come forward and therefore, the penalty order was also passed ex-party. The Id. AR of the assessee stated at Bar that the assessee is deprived of the justice for non furnishing of details but he has already explained these transaction in the statement and in respect of these two penalties levied i.e one u/s 271D for which he has sufficient explanation on merits and therefore, in the interest of justice, the assessee may be granted one more opportunities to plead the merits of his case before the JCIT/Assessing Officer. The Bench noted the orders of the lower authorities and find that the assessee was deprived of the justice. Therefore, in the interest of the justice, the assessee is directed to present the merits of the case before the JCIT/Assessing Officer and the Assessing Officer based on the fact as argued by both the parties we feel it in the interest of the justice to set aside the issue to the file of the AO to verify the documents based on all these evidences. The assessee is also directed to co-operate with the Id. AO/JCIT in deciding the issue on merits and without sufficient reason, not to take further adjournments. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having a reflection or expression

on merits of the dispute, which shall be adjudicated by the learned assessing officer independently in accordance with the law.

8. The fact of the case in ITA No. 92/Jodh/2022 are similar to the case in ITA No. 91/Jodh/2022 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 92/Jodh/2022 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 91/Jodh/2022 for the Assessment Year 2016-17 shall apply mutatis mutandis in ITA No. 92/Jodh/2022 for the Assessment Year 2016-17.

In the result, two appeals of the assessee are allowed for statistical purposes.

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

Sd/-
(Dr. S. Seethalakshmi)
Judcial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 31/07/2023
*Ganesh Kumar, PS

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