



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.171/CTK/2023

Assessment Year : 2015-16

Pahanawa Associates Pvt Ltd., Flat No.606, Vishnu Block, Balaji Complex Housing Society, Jharpada, Bhubaneswar.	Vs.	Jt. Commissioner of Income Tax, Range-1, Bhubaneswar.
PAN/GIR No.AAECF 8304 K		
(Appellant)	..	(Respondent)

Assessee by : Shri Saroj Kumar Parida, AR
Revenue by : Shri Charan Dass, Sr DR

Date of Hearing : 17/10/2023
Date of Pronouncement : 17/10/2023

ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 3.3.2023 in Appeal No. ITBA/NFAC/S/250/2022-23/10503755744(1) confirming the penalty u/s. 271E of the Act for the assessment year 015-16.

2. Shri Saroj Kumar Parida, Id AR appeared for the assessee and Shri Charan Dass, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is in the business of readymade garments. During the assessment year 2014-15, the assessee had received share application money of **Rs.59,50,000/-**. Out of the said

amount, the assessee had received an amount of Rs.28.05 lakhs in cheque and balance in cash. It was the submission that as the assessee was unable to issue shares, the assessee had returned the share application money in cash itself during the assessment year 2015-16. It was the submission that on account of repayment of share application money received, the JCIT had issued notice u/s.271E of the Act to which the assessee had filed its reply mentioning the facts. It was the submission that the Assessing Officer did not consider the submission of the assessee in its correct perspective and had held that the assessee's authorized share capital and paid up share capital was to an extent of Rs.50 lakhs and same was fully paid as on 31.3.20123 and, therefore, was of the view that the share applications money received during the assessment year 2014-15 were nothing but loans/deposits and had treated the repayment of the same in cash as violation of the provisions of section 269T of the Act and consequently levied the penalty u/s.271E of the Act. Ld AR submitted that on appeal, the Id CIT(A) confirmed the order of the JCIT levying the penalty u/s. 271E of the Act and against which the assessee is in appeal.

4. In reply to a specific query as to how the assessee could have accepted the share application money during the assessment year 2014-15 when the authorized share capital and the paid up share capital was fully subscribed, Id AR submitted that the assessee was proposing to increase

the authorized share capital and, therefore, had received the share application money.

5. It was the submission that as the business of the assessee did not grow at the rate it wanted and there was fall in the business, the assessee then decided not to proceed with the increase of the authorized share capital and refunded the share application money. It was the submission that the assessee is an honest assessee and has always been paying tax regularly. It was the submission that the penalty as levied by the JCIT and confirmed by the Id CIT(A) is liable to be deleted.

6. Ld AR has also filed written submission as follows:

“It is submitted so for the hearing of 2nd appeal is concerned that in the instant case the appellant is a Private Limited Company registered under companies Act 1956 and doing trading business of readymade garments in the above name and address.

That, in the purposes of increasing business the appellant has taken funds from some individuals in cash and bank on the account of share application money which was sent to principal supplier Mohan Clothing Company. In the meantime due to market crunch the business of the appellant decreased so the principal supplier revert the fund to the appellant. After getting fund from the principal supplier the company return the same from whom it had been taken. ng upon the letter of Ld A. O.(Ajay Kumar Nayak 1TO Ward 1(2) Bhubaneswar to The Ld JCIT, Bhubaneswar Range, Bhubaneswar date 10.10.2018 which was contained that the assessee has in contravention of section 269T of the I. T. Act. 1961 for repayment of share application money of Rs.20,00,000/- by cash in the financial year of 2014-2015 relevant to assessment year 2015-2016 along with the A.O. proposed to initiate penalty proceeding under section 271E of the I. T Act 1961 for violation of section 269T of the Act.

That the JCIT, Bhubaneswar Range , Bhubaneswar serve notice to the appellant and without provide sufficient opportunity to clarify about the allegation passed a penalty order of Rs.20,00,000/- by which being aggrieved the appellant preferred 1st appeal before the CIT Appeal, Bhubaneswar.

That the Ld. CIT Appeal (NFAC) uphold the levy of penalty without appreciating the appellant had not committed any default in terms of section 269T of the Act at all, because the appellant neither taken any loan or deposit nor he was make payment of any loan or deposit.

That the order of Ld CIT Appeal (NFAC) is not legally acceptable because the section 269T of the act has no relevance with payment of share application money therefore the allegation of The Assessing Officer in violation of section 269T of the Act is based on presumptions and conjectures.

That in the impugned year the appellant faced a scrutiny assessment under CASS (Computer Assessed Scrutiny System) specifically on share application money (notice attached herewith as Annexure-1). That after receiving notice the appellant submitted all the document as required by the AO including details of share application money. That in the financial year of 2013-2014 relevant to the assessment year 2014-2015 the appellant had opening balance in share application money of Rs.56,00,000/- and during this year the appellant had received share application money of Rs.51,50,000/-. out of Rs.51,50,000/- the appellant received Rs.20,00,000/-in cash and rest by bank. That the appellant allotted share capital for Rs.45,00,000/-from share application money and returned Rs.3,00,000/- by bank so net closing balance of share application money was Rs.59,50,000/- **(Copy of written submission attached herewith as Annexure-2).**

It is clear from the above discussion that the money received of Rs.20,00,000/- by cash on the account of share application money is accepted and confirmed by the Ld AO as the assessment order passed by the AO was nil **(Copy of assessment order for the assessment year 2015-2016 attached herewith as Annexure-3).**

That, the appellant disclosed cash receipt of share application money of Rs.20,00,000/- in his written submission, That, the Ld AO accept the contention of the appellant accordingly the AO passed order.

That, in the above discussion it is clear that the appellant repeatedly disclose share application money of Rs 20,00,000/- has been received by cash, the Ld AO did not find any controversy on it and passed the order, so here, my contention is when the money was received it is accepted as share application money but when the same money returned to the share applicant it is treated as loan or deposit and it violate section 269T of the Act which quite unjustified and bad in law.

That, the Ld AO intentionally harassed to the appellant and suggested to initiate penalty proceeding u/s 271E of The Income Tax Act 1961 by The JCIT, Bhubaneswar Range, Bhubaneswar.

As per Income Tax Act. 1961 there is no restriction for payment of share application money in cash also there is no restriction for receiving share application money even if the authorized share capital has been fully utilized.

Section 61 and Section 64 of Companies Act, 2013 is not restrict to receive share application money by cash, even if the authorized share capital has been fully utilized and otherwise it has no relation to the concerned Jurisdiction.

Therefore the order of Ld AO Bhubaneswar Range, Bhubaneswar in violation of section 269T of the Act is purely based on presumptions and conjectures.

That, the appellant herewith refer to the Order of Honourable Mumbai High Court APPEAL NO.5746 OF 2010 between Commissioner of Income Tax , Mumbai and M/s.Triumph International Finance (I) Limited.

Another case law we are herewith refer that, the assessing authority taken it as repayment of loan or deposit, is not violation of 269T as per The Hon'ble Supreme Court Judgment in the case of **CIT Vs Jailaxmi Rice Mills (2015) 379 ITR 521(SC).**"

7. In reply, Id Sr DR submitted that he relies upon the order of the Assessing Officer and Id CIT(A). It was the submission that the assessee has not applied for the increase of the authorized share capital itself and, therefore, as the authorized share capital was fully paid up as on 31.3.2013,

the assessee could not receive any further share application money and the claim of the share application money is nothing but loan/deposit under the guise of the share application money. It was the submission that the order of the Id JCIT levying penalty u/s.271E is to be upheld.

8. I have considered the rival submissions. A perusal of the facts of the present case clearly shows that the JCIT's claim that the assessee has already reached its authorized share capital by having the same fully paid up as on 31.3.2013 is not disputed. Once the authorized share capital of the assessee has been fully paid up, the only option for the assessee to enhance its share capital is by first obtaining the approval from the Registrar of Companies in respect of enhancement of authorized share capital. This also requires Board resolution. Admittedly, the assessee has not made any application to the Registrar of Companies in respect of the enhancement of the authorized share capital nor is there any Board resolution insofar as no such document has been produced neither before the Tribunal nor before the lower authorities.

9. For the purpose of receiving share application money, it is the assessee who has to issue share application forms as share application money cannot be given by anybody without the necessary share application forms. How the assessee issued share application forms when the authorized share capital of the assessee has been fully paid up is not shown, there is also no application pending in respect of the enhancement

of the authorized share capital. It is an accepted fact that the JCIT has in fact lifted the corporate veil, and by lifting the corporate veil, JCIT has come to the conclusion that the alleged share application money were nothing to loans/deposits received by the assessee. It is also an accepted fact that under the companies Act, if share application has been received and shares having not been allotted within two months or such specified period, then same is to be treated as loan and interest on the same is to be paid. In the present case, obviously, shares have not been allotted within the prescribed period. Consequently, the same has been rightly held by JCIT to be loans/deposits. Admittedly, the assessee has repaid the said amount in cash itself. Nothing stopped the assessee from repaying the amount in cheques. Thus, there is absolute violation of the provisions of section 269T of the Act. The penalty proceedings u/s.273E is nothing but consequential. In these circumstances, the penalty levied by Id JCIT and confirmed by Id CIT(A) u/s.271E stands confirmed.

9. Ld AR has relied upon the decision of the Hon'ble Supreme Court in the case of Jailaxmi Rice Mills (supra). The decision has no bearing in the present facts insofar as in that case no satisfaction was recorded in the course of denovo assessment done by the AO and it was on that ground the cancellation of penalty proceedings has been upheld

10. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 17/10/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 17/10/2023

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Pahanawa Associates Pvt Ltd., Flat No.606, Vishnu Block, Balaji Complex Housing Society, Jharpada, Bhubaneswar
2. The Respondent: Jt. Commissioner of Income Tax, Range-1, Bhubaneswar
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack