

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1758/Del/2020
Assessment Year: 2017-18

Sh. Nadeem Mirza, 1760, Gali Ghantee Wali, Turkman Gate, Delhi	Vs.	JCIT, Range-48, New Delhi
PAN :ABBPM7851R		
(Appellant)		(Respondent)

And

ITA No.1759/Del/2020
Assessment Year: 2017-18

Sh. Ameen Mirza, 1760, Gali Gahantee Wali, Turkman Gate, Delhi	Vs.	JCIT, Range-48, New Delhi
PAN :AGZPM1004B		
(Appellant)		(Respondent)

Assessee by	Sh. W.A. Khan, Advocate
Department by	Ms. Smita Singh, Sr. DR

Date of hearing	22.08.2023
Date of pronouncement	09.11.2023

ORDER

Captioned appeals are by two different assessees and are against two separate orders of learned Commissioner of Income Tax (Appeals)-16, New Delhi, for the assessment year 2017-18.

2. Since, the issue and the facts relating to both the appeals are more or less identical, for the sake of convenience, they are clubbed together and disposed of in a consolidated order.

3. Briefly the facts are, both the assesseees were joint owners of a property situated at Gali Ghantewali, Pahari Bhojla, Delhi. During the year under consideration, they have sold the property and received consideration in cash exceeding amount of Rs.20,000/-. This fact was noticed by the office of Director of Income Tax (I & CI). Since, such receipt of cash above the amount of Rs. 20,000/- was in violation of section 269SS of the Act, necessary information was passed on to the authority concerned, who is empowered to initiate proceedings for imposition of penalty under section 271D of the Act. After receiving the information, show-cause notices dated 07.03.2019 under section 274 r.w.s. 271D of the Act were issued to the assesseees. As observed by the Assessing Officer, the assesseees did not reply to the first show-cause notice. Hence, second show-cause notices were issued to the assesseees. In response, the assesseees furnished their reply stating that their case is not covered under section 269SS read with section 271D of the Act. The competent authority, however, did not find merit in the explanation of the assesseees and

proceeded to pass orders imposing penalty of Rs.7,50,000/- each in case of both the assesseees, being equivalent to the amount received in cash. Against the penalty orders so passed, the assesseees preferred appeals before learned first appellate authority. However, penalty imposed was confirmed.

4. Before us, in addition to the main grounds, the assesseees have raised certain additional grounds in their written submissions, wherein, validity of the penalty orders passed under section 271D have been challenged. It is the case of the assesseees before us that for initiating proceedings under section 271D of the Act, the Assessing Officer has to record a satisfaction while completing assessment under section 143(3) of the Act. It is submitted that since in case of the present assesseees, no assessments have been completed under section 143(3) of the Act and there is no recording of satisfaction by the Assessing Officer for initiation of proceedings under section 271D of the Act, the penalty orders passed under Section 271D are invalid. In support of such contention, learned counsel relied upon a decision of the Hon'ble Delhi High Court in case of CIT Vs. JKD Capital & Finlease Ltd. ITA 780/2015. He further relied upon the following decisions:

1. Amit Chakrapani Vs. CIT, ITA No.2493/Del/2018 (AY: 2008-09) dated 05.11.2018.
5. Without prejudice, learned counsel submitted that on merits also, the assessee has a strong case, as, penalty under section 271D is not automatic, but it depends upon the acceptability of the explanation furnished by the assessee. He submitted, assessee is a poor and uneducated person and are not aware of the provisions of section 269SS. He submitted, the assessee was not made aware of the amendment brought to the said provision by their counsel/advisor. Thus, the default happened due to bonafide mistake arising out of ignorance of law. Thus, he submitted, due to such bonafide mistake, penalty should not be levied. Thus, he submitted, penalty imposed should be deleted.
6. Learned Departmental Representative submitted that there is no dispute that the assessee has violated the provision of section 269SS of the Act by receiving cash above the amount of Rs.20,000/-. Drawing our attention to section 271D of the Act, learned Departmental Representative submitted that there is no doubt that the officer in the rank of Joint Commissioner has not only initiated proceedings for imposition of penalty, but has passed the orders of penalty under section 271D of the Act. Thus,

he submitted, the contentions of the assessee that the penalty orders are invalid, have no legs to stand.

7. We have considered rival submissions and perused materials on record. We have also applied our mind to the decisions relied upon. At the outset, we must observe, the issues raised in the additional grounds challenging the validity of the penalty orders were never raised either before the officer imposing penalty or learned first appellate authority.

8. Be that as it may, for the sake of completeness, we proceed to deal with the additional grounds. It is the contention of the assessee that since, the Assessing Officer has not passed any assessment order under section 143(3) of the Act and penalty proceedings under section 271 could only have been initiated after recording satisfaction in course of such assessment proceedings, penalty orders are invalid. In our view, the aforesaid contentions of the assessee are unacceptable.

9. On a reading of section 269SS as well as section 271D of the Act, it is observed that the only requirements under the law is, there must be violation in terms of section 269SS and penalty proceedings have to be initiated and completed by the officer in the rank of JCIT. In the facts of the present appeals,

undoubtedly, the JCIT has initiated the proceedings for imposition of penalty. On perusal of the penalty order, it is observed that the show-cause notice under section 274 read with section 271D was issued on 07.03.2019 and the penalty orders were passed on 31.07.2019. Therefore, it is well within the period of limitation.

10. To our understanding, there is no requirement either under sections 271D or 275(1) or any other provision, which necessitates initiation of penalty proceeding under sections 271D of the Act, only after recording of satisfaction in assessment orders passed under section 143(3) of the Act. Though, the assessee has relied upon CBDT Circular No. 9/DV/2016, dated 26th April, 2016 to draw support in respect of his submission, however, on a careful reading of the said Circular, it is observed that in the case decided by the Hon'ble Kerala High Court, wherein, it has been clearly held that the competent authority, who can levy penalty, is the JCIT. Therefore, only JCIT can initiate the proceeding for levy of penalty and no other person. Even, the Assessing Officer could not have initiated the proceeding for imposition of penalty. Therefore, in our view, the penalty proceedings have been rightly initiated by the JCIT and

the orders have been passed within the prescribed period of limitation.

11. On a careful examination of the decision of the Jurisdictional High Court in case of CIT Vs. JKD Capital & Finlease Ltd. (supra), it is observed that it is factually distinguishable as in the said case the Assessing Officer, while completing assessment, had issued a direction to initiate proceedings under section 271(1)(c) read with section 271E of the Act. Thus, considering the fact that the penalty proceeding has already been initiated by the Assessing Officer in course of assessment proceedings, Hon'ble High Court has held that the limitation will run from the date of initiation of penalty proceedings by the Assessing Officer. However, factual position is different in the present case as penalty proceedings were initiated by the JCIT himself and not by the Assessing Officer in course of assessment proceedings.

12. As far as merits of the issue is concerned, undisputedly, the assessee has received cash exceeding the threshold limit of Rs.20,000/-. The only explanation of the assessee is that they have received the cash due to ignorance of law, being unaware of

the amended provision of section 269SS of the Act, including the specified sum within the purview of section 269SS.

13. In our view, the aforesaid contention of the assessee is equally unacceptable considering the fact that the subject amendment was brought to the statute in the year 2015 and the appeals relate to assessment year 2017-18. No other reasonable explanation has been furnished by the assessee to demonstrate that the violation of section 269SS was due to bonafide reasons or reasonable cause. In view of the aforesaid, we do not find any valid reasons to interfere with the decision of the first appellate authority.

14. In the result, appeals are dismissed.

Order pronounced in the open court on 9th November, 2023

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 9th November, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi