

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No:- 797/Del/2023
(Assessment Year: 2014-15)**

Late Shri Pawan Kumar, Represented by Smt. Nirmal Jain (legal Heir), KK-161 Kavi Nagar, Ghaziabad. PAN No: ACCPJ8057G	Vs.	JCIT, Range-2, Ghaziabad.
APPELLANT		RESPONDENT

Assessee By:	Shri Deepanshu Agarwal, CA & Shri LM Agarwal, CA
Revenue By:	Shri Vivek Vardhan, Sr.DR
Date of Hearing:	07.11.2023
Date of Pronouncement:	04.12.2023

ORDER

PER ASTHA CHANDRA, J.M.

The appeal filed by the assessee is directed against the order dated 02.02.2023 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi [**"CIT(A)"**], whereby he confirmed the penalty of Rs. 1,40,000/- imposed by the JCIT, Range-2, Ghaziabad under section 271E of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year ("**A.Y.**") 2014-15 on reference made by the ITO, Ward-2(1), Ghaziabad ("**AO"**).

2. The assessee has challenged the order of the Ld. CIT(A) on the following grounds:-

“1. On the facts and circumstance of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals) (CIT(A)) NFAC dt. 02.02.2023 is bad both in the eye of Law and on facts and decided the appeal on the ground which were never raised by the appellant.

2. That the learned CIT(A) erred in not deciding the following grounds as raised by the appellant

(I) That the Learned JCIT issue the penalty order U/s 271E imposing penalty of Rs. 140000.00 without jurisdiction illegal, wrong, void and liable to be canceled.

(II) That no cause of action arise to initiate the penalty proceeding for AY 2014-15 which was the foundation of penalty proceeding was not in existence at the time of issue penalty notice i.e. no proceeding for relevant AY 2014-15 were Pending at the relevant point of time. That in any case penalty notice and order for AY 2014-15 is beyond jurisdiction and untenable in law as per covered case judgment.

3. That the Learned CIT(A) further erred in passing the order in the name of deceased person while the fact is that the appellant expired on 22.11.2018 and legal heir were place on the appeal file records.

4. The Applicant craves leave to add, amend, or alter any of the grounds.”

3. The facts in brief are that during the course of complete scrutiny of the case of the assessee for A.Y. 2015-16, the Ld. AO collected information from Allahabad Bank and found that on 21.03.2014, the assessee had repaid an amount of Rs. 1,40,000/- to Shri S.C. Jain, through bearer cheque in contravention of the provisions of Section 269T of the Act. In his assessment order dated 29.12.2017 u/s 143(3) of the Act for A.Y. 2015-16, he mentioned that matter for imposition of penalty under section 271E shall be referred to Additional CIT, Range -2, Ghaziabad. Accordingly, the Ld. AO referred the matter for levy of penalty vide letter dated 04.04.2018 to Ld. JCIT.

4. In response to show cause notice, the assessee submitted as under:

"1. That the case of the assessee was not final under section 143(3) for A.Y. 2014-15 and no proceedings for the relevant assessment year were pending at any point of time, so initiation of penalty proceedings u/s 271E for A.Y. 2014-15 is illegal and invalid. The assessee relied on the following case judgments:- Baldev Singh Vs ACIT No: 1125 & 1126/CHD/2011 (ITAT Chandigarh). Annexure-1)

Kirti Kumar Vs ACIT, Lucknow ITA No.:81/L/KW/2014 (ITAT Lucknow) Annexure-2.

CIT Vs Manohar Lal Thakral ITA No: 812 of 2010 (Punjab & Haryana HC)

Since no proceedings were pending for A.Y. 2014-15, therefore initiation of penalty 271E of the I.T. Act is bad in law and illegal.

2. That no cause of action arose to initiate the penalty proceedings as the assessment order for A.Y. 2014-15 which was the foundation of penalty proceedings was not in existence at the time of issue penalty notice i.e no proceedings for relevant year (AY 2014-15) were pending at the relevant point of time.

3. That issue of penalty notice /s 271E for above assessment year is beyond jurisdiction and untenable in law.

4. That the assessee filed the return for A.Y. 2014-15 on 12.03.2010 and case processed u/s 143(1)(a) of the I.T. Act while notice u/s 274 read with u/s 271E of the I.T. Act was issued to the assessee on 04.04.2018. It being a case of processing the return of income there is no finding in the A.O. order with regard to applicability or otherwise of section 269T of the I.T. Act to the assessee case and on the above basic facts Hon'ble Punjab High Court issue important order in case of CIT Vs. Manohar Lal Thakral. That it was within the preview of the AO to bring the assessee's case to scrutiny and to make regular assessment u/s 143(3) of the I.T. Act. It was along with in the power of 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 proceedings were started on the basis of finding in the A.Y. 2015-16.

5. That it is presumed that the Ld. ITO well known the above provision of the Act. In fact the proposal to initiate the penalty proceedings beyond the jurisdiction by the Ld. ITO is the tantamount to harassment of the assessee.

6. That the assessee very much concerned about the word used by the Ld. ITO against old senior citizen reputed assessee "that he trying to get assessment completed through manipulated document and incorrect information."

7. For repayment made to Smt. Nirmal Jain vide Ch No. 042137 dated 12.04.2014. since the matter is related to A.Y. 2015-16, separate reply is being furnished and the said repayment was duly covered by account payee cheque. So, it is requested to drop the penalty proceedings u/s 271E of the I.T. Act for

repayment of loan of Rs. 1,40,000/- to Sh. S C Jain on dated 21.03.2014 relevant to A.Y. 2014-15.”

5. The explanation was not acceptable to the Ld. JCIT. According to him passing of order under section 143(3) of the Act before levy of penalty under section 271E of the Act is not at all required. The information for violation of the provision of Section 269T can flow to the Ld. AO from any source. The only source of such information therefore cannot be assessment proceedings. During the course of proceedings in A.Y. 2015-16 the fact that in A.Y. 2014-15 also the assessee has repaid loan through bearer cheque to Shri S.C. Jain came to the knowledge of the Ld. AO who rightly referred the matter for levying the penalty. Since the repayment of loan of Rs. 1,40,000/- was made by bearer cheque and not through crossed cheque, for violation of the provision of Section 269T, the assessee is liable to be penalized under section 271E of the Act for the said default. The Ld. JCIT, therefore, imposed the impugned penalty.

6. The assessee appealed before the Ld. CIT(A) but without success. The Ld. CIT(A) citing certain decisions dismissed the appeal of the assessee by observing in para 5.9 of his appellate order as under:

“5.9 In view of the above discussed decisions of the Hon'ble Courts, it can be held that for escaping the rigours of the provisions only essential to show that the transaction is genuine and bonafide but also to of section 271D/271E, it is not show that for some bonafide reasons, the assessee could not carry out the transaction by way of account payee cheque or demand draft or other specified modes. In other words, the liability for penalty u/s, 271E is to be examined within the 4 corners of Sec. 273B of the Act ie, on the touch stone of reasonable cause or its absence. The onus to establish the same with the aid of impeccable evidence is squarely upon the defaulter and would be de-hors other provisions of the Act.”

7. This has brought the assessee before the Tribunal and all the grounds of appeal relate thereto.

8. The Ld. AR submitted the brief synopsis contained at pages 1 to 3 of the Paper Book which is reiteration of the arguments advanced by the assessee before the Ld. JCIT/CIT(A). The Ld. AR placed strong reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Shri Manohar Lal Thakral in ITA No. 812 of 2010 decided on 14.01.2011 and decisions of ITAT Chandigarh in the case of Baldev Singh vs. Addl. CIT in ITA No. 1125 and 1126/Chd/2011 dated 28.02.2012 and ITAT Lucknow in the case of Shri Kirti Kumar vs. Addl. CIT in ITA No. 81/Luck/2014 dated 19.02.2016 (copies at pages 2 to 13 of the Paper Book).

9. The Ld. Sr. DR submitted that section 271D and 271E are separate penalty proceedings independent of assessment proceedings unlike section 271(1)(c) of the Act. He supported the order of the Ld. CIT(A) sustaining the impugned penalty on grounds of absence of reasonable cause for the default which invited the impugned penalty.

10. We have carefully considered the submissions of the parties and perused the record. It is observed that the assessee had challenged the illegality of initiation of penalty proceedings under section 271E of the Act before the Ld. CIT(A) for A.Y. 2014-15. Relying on the decisions (supra) of the ITAT, it was pleaded that initiation of penalty proceedings is illegal and invalid since no proceedings for A.Y. 2014-15 were pending. It was brought to the notice by the Ld. CIT(A) that the return for A.Y. 2014-15 filed on 12.03.2015 was processed under section 143(1) of the Act and that in the order under section 143(1)(a) there was no finding by the then Ld. AO with regard to applicability or otherwise of section 269T of the Act. On the above facts, the decision (supra) of the Hon'ble Punjab & Haryana High Court in the case of Manohar Lal Thakral was brought to the notice of the Ld. CIT(A). Unfortunately, the order of the Ld. CIT(A) does not deal with any of the contention of the assessee raised before him. Rather, the opening para 5.2 of his appellate order begins with incorrect

statement contrary to the facts on records that during the course of assessment proceedings for A.Y. 2014-15 the Ld. AO noticed that the assessee has repaid his loans through bearer cheque and therefore was liable for penalty. The undisputed fact on record is that the Ld. AO during the course of assessment proceedings for A.Y. 2015-16 had collected information from Allahabad Bank which revealed that the amount of Rs. 1,40,000/- was repaid by the assessee vide cheque No.- 042133 on 21.03.2014 (relevant to A.Y. 2014-15) to Shri S.C. Jain. The same information from the bank revealed that the assessee had repaid an amount of Rs. 50,000/- vide bearer cheque No. 042137 on 12.04.2014 (relevant to A.Y. 2015-16) to Smt. Nirmal Jain in respect of which too the Ld. AO observed at page 8 of the assessment order that penalty proceedings u/s 271E shall be separately initiated. It may be mentioned that the Ld. CIT(A) has deleted the penalty of Rs. 50,000/- levied under section 271E for A.Y. 2015-16 by recording the finding that repayment of loans by the assessee is by bank transfer and not by bearer cheque (page nos. 37 to 41 of the Paper Book.)

11. It is an established fact that penalty under section 271E of Act for A.Y. 2014-15 in the case of the assessee has been initiated while completing assessment proceedings for A.Y. 2015-16. This, in our view, is not legally tenable. Penalty proceedings can be initiated at any time while the Ld. AO is in seisen of the assessment proceedings of the relevant A.Y. in which the default occurred and not afterwards. On facts similar to that of the assessee, the Hon'ble Punjab & Haryana High Court held in Mahonar Lal Thakral (supra) that it being a case of processing the return of income, there is no finding in the assessing officer's order with regard to the applicability or otherwise of section 269T of the 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 under section 143(3) of the Act. It was also within the power of the AO at the

appropriate stage to initiate proceedings under section 147 of the Act against the assessee. No such action was taken.

12. It is not in dispute that there were no proceedings pending before the Ld. AO qua the assessee for A.Y. 2014-15. We, therefore hold that initiation of penalty proceedings under section 271E of the Act on the basis of assessment order for A.Y. 2015-16 is bad in law and imposition of impugned penalty by Ld. JCIT and confirmation thereof by the Ld. CIT(A) is not sustainable. The plea of Ld. Sr. DR that penalty under section 271D and 271E can be initiated dehors any pending proceedings for relevant A.Y. is devoid of merit.

13. We agree with the contention of the assessee that the Ld. CIT(A) decided the appeal on ground of 'reasonable cause' which was not raised by the assessee before him. The assessee has also challenged the order of the Ld. CIT(A) on the ground that it has been passed in the name of deceased person which too is fatal.

14. On the facts and in the circumstances of the case, we hold that the impugned penalty is not sustainable. It does not rest on sound legal footing. We, therefore delete it.

15. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 04/12/2023

sd/-

sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 04/12/2023
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	