

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं

डॉ. मनीष बोराड, लेखा सदस्य
के समक्ष

**Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 594/KOL/2023
Assessment Year: 2015-16**

***M/s. Shree Shankar Service Station.....Appellant
[PAN: AAWFS 5591 E]***

Vs.

ITO, Ward-49(1), Kolkata.....Respondent

Appearances:

Assessee represented by: Sh. Sunil Surana, A/R.

Department represented by: Sh. P.P. Barman, Addl. CIT, Sr. D/R.

Date of concluding the hearing : September 19th, 2023

Date of pronouncing the order : December 11th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2015-16 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income Tax (Appeals)- NFAC, Delhi [in short 'Id. CIT(A)'] dated 11.01.2023 arising out of the assessment

order framed by the Assessing Officer (in short ld. 'AO') u/s 143(3) of the Act dated 26.12.2017.

2. Registry has informed that the appeal is time barred by 92 days. Condonation application has been filed by the assessee and the reason for the said delay is the illness of the working partner who was hospitalized during some part of March, April & May 2023 in ILS Hospital, Salt Lake and Fortis Hospital which prevented him to look after the business as well as the tax matters. An affidavit has been filed in support of this reason. Ld. D/R objected the condonation of delay. We however, considering the reasonable cause and the illness of the working partner of the assessee firm, condone the delay of 92 days and admit the appeal for adjudication on merits.

3. The assessee is in appeal before this Tribunal raising the following grounds:

"1. For that the Ld. CIT(A) erred in passing the order without deciding the issue with regard to the validity of the order on initiation and satisfaction with regard to the applicability of the provisions of sec 271E stated in ground no. 2 of the memo of appeal.

2. For that the Ld. CIT(A) erred in collectively deciding all the grounds without commenting on the initiation of the penalty proceeding u/s 271E for giving loans when no penalty can be imposed u/s 271E for giving loans.

3. For that the Ld. CIT(A) erred in not accepting the confirmations from the parties doubting their identity only because they did not comply with the notice u/s 133(6) & they were not produced before the JCIT when notices u/s 133(6) were duly served on them, identity was never doubted and assessee was never asked to produce them.

4. For that the Ld. CIT(A) erred in confirming the penalty relying on the cashbook found during the course of survey ignoring the

submissions that cash book was not reliable as the accountant siphoned the cash and manipulated the books showing that the loans have been repaid in cash.

5. For that the Ld. CIT(A) erred in confirming the penalty imposed only on suspicion when it was proved with reference to the confirmations from parties which were filed that no repayment of loan was made.

6. For that the Ld. CIT(A) erred in not appreciating the fact that the books were manipulated whereby the loan creditors were debited while crediting cash therefore, the creditor will naturally not appear in the balance sheet.

7. For that on the facts and circumstances of the case, the penalty imposed is not in accordance with law as well as on facts and may kindly be deleted.”

4. Brief facts of the case as culled out from the records are that the assessee is a partnership firm engaged in the business of dealer of petroleum products. Survey u/s 133A of the Act was conducted on 03.03.2015. Subsequently, return of income for AY 2015-16 was furnished which was selected for scrutiny through CASS followed by serving of valid notices u/s 143(2) & 142(1) of the Act. The assessment proceedings were completed on 26.12.2017 u/s 143(3) of the Act. During the course of carrying out of assessment proceedings, the Assessing Officer (in short ld. 'AO') while examining the books of accounts observed that the assessee has repaid loan in cash to 7 parties totalling to Rs. 97,41,990/-. The entries were appearing in the cash book for the alleged payment. Based on these cash entries, ld. AO came to a conclusion that the assessee has repaid the loans in cash and thus, has violated the provisions of Section 269T of the Act and therefore, initiated penalty proceedings 271E of the Act.

5. During the course of penalty proceedings when the assessee was confronted with the alleged repayment of unsecured loan in cash, it was stated by the assessee that no such payment in cash was made and the Accountant of the assessee firm siphoned off the cash by making entries in the cash book debiting the alleged parties. It was also submitted that loans taken from the alleged parties have been repaid through account payee cheque in the subsequent years and also the cash was recovered from the Accountant after being threatened of the police action. It was thus, submitted that since no repayment of loan has been made in cash, penalty is not leviable u/s 271E of the Act. The assessee has filed copies of confirmation from some of the parties stating that no such cash payment was received in cash against the outstanding loan. Still, ld. AO was not satisfied and he levied the penalty at the rate of 100% of the alleged payment of Rs. 97,41,990/-.

6. Aggrieved, the assessee preferred appeal before ld. CIT(A) and again reiterated the submissions as were given during the course of penalty proceedings. However, ld. CIT(A) on observing that the notices issued to the alleged cash creditors u/s 133(6) of the Act were not replied which could have helped the assessee to prove that no such loan payment was made and finally confirmed the penalty levied u/s 271E of the Act.

7. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee placed on record the copies of ledger account of various cash creditors exhibiting that loans taken from various parties have been repaid back only by account payee cheques and therefore, since no repayment was made in cash

during FY 2014-15, penalty levied u/s 271E of the Act deserves to be deleted. Reference was also made to the decision of Coordinate Bench, Kolkata in the case of *M/s. Ajit Vanijya Pvt. Ltd. vs. ITO* in *ITA No. 2448/KOL/2017* order dated 23.02.2023 wherein the issue was relating to unexplained cash credit u/s 68 of the Act and one of the alleged cash creditors is also the party and gave loan to the assessee firm. In the case of *M/s. Ajit Vanijya Pvt. Ltd. (supra)* even though notices issued u/s 133(6) of the Act were not replied still this Tribunal based on the documentary evidences filed by the assessee deleted the addition made u/s 68 of the Act.

8. On the other hand, ld. D/R vehemently argued supporting the order of ld. CIT(A) and further added that the cash entries were appearing in the books and the assessee cannot rebut this fact and once the repayment of loan has been made in cash there is a clear violation of 269T of the Act and for such violation, ld. AO has rightly levied penalty u/s 271E of the Act.

9. We have heard rival contentions and perused the records placed before us. Penalty levied u/s 271E of the Act at Rs. 97,41,990/- is in dispute before us. This penalty has been levied at the rate of 100% of the alleged cash payment to the unsecured loan which are as follows:

Sl. No.	Name of the party	Amount (Rs.)
i.	Smt. Radha Devi Goenka	11,00,000
ii.	Jagdamba Enterprise	41,990
iii.	Sarbottam Alloy	32,00,000
iv.	R.K. Goenka	20,00,000
v.	Shree Yukta Tradecom Pvt. Ltd.	2,00,000
vi.	Interiors	12,00,000
vii.	Texas Vincom Pvt. Ltd.	20,00,000
	Total	97,41,990

10. It is an admitted fact that from the above stated parties the assessee took unsecured loan either during the year or in the past. Ld. AO while examining the books of accounts noticed that in the cash book that some part of the loan from the above stated parties have been repaid in cash. Based on this observation, ld. AO proceeded to levy penalty u/s 271E of the Act. So far as the provisions of Section 271E of the Act is concerned, if an assessee violates the provisions of Section 269T of the Act as per which if a person repays any loan or deposit otherwise then in accordance with the provisions of Section 269T of the Act then he is liable to pay by way of penalty a sum equal to the amount of the loan or deposit so repaid.

11. The condition for invoking Section u/s 271E of the Act arises only if there is a violation of Section 269T of the Act and in the instant case ld. AO has alleged that the assessee has repaid the alleged unsecured loan in cash.

12. Now, before us ld. Counsel for the assessee contended that no such cash payment has been made to the loan creditors. Ld. Counsel for the assessee has stated that the working partners of the assessee firm were suffering from illness for last 4/5 years and were not able to look after the business regularly on day-to-day basis and the accountant of the assessee firm took advantage of the situation and the cash available with the assessee firm was siphoned off by way of making wrong entries in the books which in this case was the wrong entry of repaying the loan creditors in cash. It has been contended that when the unsecured loan from all the alleged loan creditors have been taken through account

payee cheque of which few are private limited companies also, why would the assessee firm repay the unsecured loan in cash. It is also submitted before us that the alleged sum has been subsequently repaid through banking channel and in support thereof copies of ledger account have been filed. The assessee firm has also filed the proof of name, address, PAN of all the loan creditors along with the confirmation.

13. We have gone through these details and find merit in the contentions of Id. Counsel for the assessee for the reason that when the loans have been taken through banking channel and in the subsequent years, they have been repaid also through banking channel why would the assessee make the payment in cash to the loan creditors. Regular illness of the working partner of the assessee firm seems to be a valid reason which seems to have paved the way for the accountant to siphon off the cash as stated by Id. Counsel for the assessee. Considering the fact that confirmation letter from various loan creditors have been filed, ledger accounts have also been filed, details of bank through which repayment has been made in subsequent period is also placed on record which brings us to a conclusion that during the year under appeal the assessee had not made any payment of the unsecured loans in cash and the entries in the cash book are on account of misappropriation by the accountant. Therefore, since under the given facts and circumstances of the case where we have found that assessee has not made any repayment in cash of the alleged sum, there is thus, no violation of Section 269T of the Act and accordingly no penalty u/s 271E of the Act could be levied. The

finding of ld. CIT(A) is set aside and the penalty of Rs. 97,41,990/- levied u/s 271E of the Act stands deleted.

14. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 11th December, 2023

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 11.12.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Shree Shankar Service Station, 292/1, Jessore Road, Dumdum, Kolkata-700 055.**
- 2. ITO, Ward-49(1), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(D/R), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata