

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माजनीय श्री महावीर सिंह, उपाध्यक्ष एवं
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.789/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

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आयकर अपील सं. ITA No.790/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

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आयकर अपील सं. ITA No.791/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2019-20)

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आयकर अपील सं. ITA No.792/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2019-20)

DCIT Central Circle-2(2) Chennai-34.	<u>बनाम</u> / Vs.	Shri Surendra Reddy Chirla No.4, II Cross Street, Sterling Road, Nungambakkam, Chennai-600 034.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAGPR-3181-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri V.Nandakumar (CIT)-Ld.DR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D.Anand (Advocate)-Ld.AR

सुनवाईकी तारीख/ Date of Hearing	:	29-11-2023
घोषणाकी तारीख / Date of Pronouncement	:	20-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The revenue is in further appeal against common orders passed by Ld. Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] for captioned assessment years vide two separate orders both dated 02.05.2023 deleting penalty levied by Ld. AO u/s 271D / 271E of the Act for violation of provisions of Sec.269SS and 269T. Facts as well as issues are quite identical in all the appeals. It is admitted position that adjudication in any one appeal would apply to other appeals also. For the purpose of adjudication, ITA No.789/Chny/2023 has been taken to be lead appeal. The grounds raised by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the penalty u/s.271D amounting to Rs.75,00,000 on the ground that Penalty proceedings u/s.271D had not been validly initiated and consequently, the penalty order passed by the Addl.CIT was bad in law.

2.1 The Ld.CIT(A) erred in holding that penalty proceedings u/s.271D had not been validly initiated for the reason that the assessing officer has not recorded satisfaction in the assessment order regarding violation of provisions of Sec. 269SS, placing reliance on the apex court decision in the case of **CIT Vs Jai Laxmi Rice Mills(2015) 379 ITR 521(SC)** and decision of High Courts and Tribunals rendered on the basis of the said Supreme Court decision, without appreciating that the decision in the case of Jai Laxmi Rice Mills supra was rendered in the context of peculiar facts of the case, which could not be applied to the facts of the present case.

2.2 The Ld.CIT(A) erred in failing to appreciate that in the case of Jai Laxmi Rice Mills, the penalty u/s.271E was levied on the basis of reasons recorded in the assessment order set aside(Non-existent). In that context, the Supreme Court directed to delete the penalty levied u/s.271E for the reason that satisfaction recorded for initiation of penalty proceedings in the assessment order set aside would not survive. But in the instant case, on the basis of reference made by the assessing officer, the Addl.CIT initiated penalty proceedings as the case was prima facie liable to be proceeded by initiation of penalty proceeding u/s.271D.

2.3 The Ld.CIT(A) failed to appreciate that the competent authority under the Income tax Act for levying penalty u/s.271D is the Joint / Addl. Commissioner. The AO being the Deputy Commissioner of Income tax, who is below the rank of Addl. Commissioner of Income tax has made reference to competent authority (Addl.CIT) for initiating penalty proceedings u/s.271D. Hence, the AO, being DCIT in this case,

need not record any satisfaction as he is not competent to initiate proceedings u/s.271D. Hence, the ratio of decision of Hon'ble Supreme Court in the case of M/s.Jai Laxmi Rice Mills is not applicable to this case.

2.4 The Ld. CIT(A) erred in observing that the satisfaction is to be recorded with regard to violation of provisions of Sec.269SS in the assessment order by the assessing officer, without appreciating that there is no specific mention in Sec.271D of the Act that the AO has to record satisfaction before making reference to Joint/Addl. Commissioner for initiating penalty proceeding under this section **unlike** in Sec.271(1) which starts with the clause "If the assessing officer or is satisfied that".

2.5 The Ld.CIT(A) erred in failing to appreciate that the decision of Supreme Court in the case of Jai Laxmi Rice Mills cannot be applied to all the cases in which penalty u/s.271D/E is levied and the said decision is clearly distinguished in the decisions of ITAT, D Bench, Mumbai in the case of **M/s. Diaster Jewellery Private Limited Vs.Addl.CIT, Range, 8(1), Mumbai** in ITA No.139/Mum/2012 dated 03/08/2016 and ITAT, D Bench, Ahmedabad in the case of **M/s.B.P.Patel and Co Vs.ITO in ITA No.613/Ahd/2017** dated 13/10/2020.

3.The Ld.CIT(A) erred in placing reliance on CBDT Circular No 09/DV/2016 dt 26.04.2016 with the observation that the AO is required to make reference to the Range Head regarding any violation of section 269SS in the course of assessment proceedings.

3.1 The Ld.CIT(A)'s erred in deleting the entire penalty on the basis of this Board's Circular dated 26.04.2016 without adjudicating the merits of the case, without appreciating that the word used in the Circular " may be advised" clearly denotes that it is not mandatory for making reference to Range Head during the course of assessment proceedings itself. This Circular is only advisory and not mandatory in nature.

3.2 The Ld.CIT(A) failed to appreciate that the circular states that, reference can be made during the course of assessment proceedings or any other proceedings under this Act. In this case, 153C assessments have been completed on the basis of strength of warrant issued in the case of Vels group of Educational Trust. The proceedings before ITSC have been pending in the case of Vel's group and the AO's action of referring the case to Addl.CIT was in compliance of Board's Circular, though it is only advisory in nature.

For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."

2. The Ld. CIT-DR advanced arguments supporting the impugned penalty as levied by Ld. AO. The Ld. CIT-DR submitted that penalty has wrongly been deleted on legal grounds. On the other hand, Ld. AR supported the impugned order and submitted that the adjudication in the impugned order is in consonance with the departmental circular and

binding decisions of Hon'ble Apex Court. Having heard rival submissions and upon careful consideration of case records, our adjudication would be as under.

Penalty Proceedings

3.1 Upon perusal of penalty order dated 07.12.2022, it could be seen that the assessee was assessed u/s 143(3) r.w.s. 153C of the Act on 28.09.2021. In the assessment, the returned income filed by the assessee for Rs.93.48 Lacs was accepted. The assessment was so framed pursuant to search action by department u/s 132 in the case of M/s Vels Group of Education and ors. on 19.03.2019 wherein certain incriminating material was found. After recording requisite satisfaction u/s 153C, Ld. AO initiated proceedings u/s 153C and completed the assessment accepting the returned income filed by the assessee.

3.2 Though no penalty proceedings, whatsoever, were initiated in the assessment order, Ld. AO proceeded to levy impugned penalty u/s 271D on the assessee and made proposal to Addl. CIT (appropriate authority) for levy of penalty. This was so since upon perusal of incriminating material as seized during search operations, it was observed that the assessee received loan by way of cash to the extent of Rs.75 Lacs during this year which was in violation of the provisions of Sec.269SS of the Act. The Ld. AO moved a proposal to appropriate authority for initiation for proceedings u/s 271D. Accordingly, the assessee was put to show cause notice by appropriate authority on 02.06.2022 calling for explanation from the assessee.

3.3 The assessee made detailed submissions on 30.08.2022 and inter-alia, submitted that no such loan was received or repaid during the year.

There was no requirement on the part of the assessee to take such deposits. The assessment was completed after due consideration of the entire transactions undertaken during the year. During the course of assessment itself, it was proved that the assessee did not accept any cash by way of loan or deposits or specified sum as alleged. The assessee also submitted that it had no connection with the cash payments and receipts as mentioned in the seized material and it was completely one-sided entries by other group. No documentary evidence was collected from assessee's place pertaining to aforesaid cash entries. The assessee also filed confirmation of Chairman of M/s Vels group confirming that there were no cash transactions between the assessee and that group. In the said background, the assessee assailed proposed penalty.

3.4 However, Ld. Addl. CIT held that presumption raised u/s 132(4A) could be rebutted only with convincing evidences. Whether the assessee was in requirement of loan / deposit was not material. There was no necessity that evidence should be collected from assessee's premises. The confirmatory letter as furnished by the assessee was dated 30.08.2022 i.e., much after the issuance of show-cause notice issued on 05.08.2022. This confirmation letter will not be corroborative evidence to rebut the contention narrated in the seized material. Finally, Ld. Addl. CIT imposed penalty of Rs.75 Lacs u/s 271D which was subjected to assessee's further appeal before first appellate authority.

Appellate proceedings

4.1 The assessee assailed penalty on merits as well as on legal grounds. The assessee reiterated that it had no connection with the cash

payments and receipts as mentioned in the seized material of M/s Vels group and these entries were merely one-sided entries only. The submissions made during penalty proceedings were again reiterated during appellate proceedings. The assessee also submitted that the presumption u/s 132(4A) would apply only to the person from whom seizure was made and not against any other party. The penalty was imposed merely on the basis of a word file taken from the premises of M/s Vels group. There was no corroborative evidence found from the assessee to support these entries.

4.2 In support of legal grounds, the assessee submitted that penalty proceedings would necessarily be initiated in the quantum assessment order itself. In the present case, there was no such satisfaction of existence of cash receipts / payments recorded in the quantum assessment order. The assessment order was issued with the prior approval of Addl. CIT as per Sec.153D of the Act. Before granting the approve, the Addl. CIT should have been apprised of the entire facts with all records and materials seized and other evidences collected during the course of search and further enquiry / assessment should have been done before arriving at the satisfaction. Without this exercise, the impugned penalty could not be sustained in the eyes of law. To support the same, reliance was placed on CBDT Circular no. 09/DV/2016 dated 26.04.2016 advising Assessing Officer to make a reference to the Range Head regarding violation of provisions of Sec.269SS and 269T during the course of assessment proceedings itself. In the present case, the proposal was send vide letter dated 26.05.2022 whereas the assessment order was passed on 28.09.2021. Thus, the reference was

not made during the course of assessment proceedings as directed in the said Circular. Since the aforesaid action was in gross violation of the Departmental Circular, the impugned penalty was liable to be deleted.

4.3 In support of its submissions, the assessee relied on the decision of Hon'ble Supreme Court in the case of **CIT vs. Jai Laxmi Rice Mills (379 ITR 521)** which specified that no penalty could be levied u/s 271E without recording the satisfaction. The assessee also referred to the decision of Hon'ble High Court of Andhra Pradesh and Telangana in **Srinivasa Reddy Reddeppagiri vs. JCIT (332 CTR 0614 Telangana)** which followed the aforesaid decision of Hon'ble Apex Court and deleted penalty u/s 271D.

4.4 The Ld. CIT(A) concurred with assessee's submissions and held that the ratio of both the above decisions would apply to the fact of the present case. The relevant extract of both the decisions have been extracted in Paras 18 & 19 of the impugned order. It was further noted by Ld. CIT(A) that similar ratio was laid down by Chennai Tribunal in the case of **T. Shiju vs. JCIT (ITA No.2829/Chny/2018)** which, following the cited decision of Hon'ble Apex Court in **CIT vs. Jai Laxmi Rice Mills (supra)**, deleted penalty u/s 271D due to non-recording of satisfaction. Similar ratio was laid down by Delhi Tribunal in the case of **Anglican India Consultancy Pvt. Ltd. Vs. Addl. CIT (ITA No.121/Del/2016 dated 03.10.2017)**; Kolkata Tribunal in **Binod Kumar Agarwal vs. JCIT (ITA No.238/Kol/2013 dated 04.02.2016)**; Bangalore Tribunal in **Smt. S.B. Patil vs JCIT (ITA Nos.1053 & 1054/Bng/2014)**.

4.5 Concurring with all these decisions, Ld. CIT(A) held that recoding of satisfaction in the assessment order regarding the violation of provisions

of Sec.269SS was mandatory requirement for valid initiation of penalty proceedings u/s 271D of the Act. No such penalty could be levied if AO failed to record such satisfaction in the assessment order. Since no such satisfaction was recorded in the present case, the penalty was not validly initiated and therefore penalty orders passed were bad-in-law.

4.6 The Ld. CIT(A) also concurred that the reference to Addl. CIT was made for initiation of penalty proceedings after nearly 8 months from the date of conclusion of concerned assessment proceedings. The same was in violation of CBDT circular which mandate that the penalty proceedings should be initiated during the course of assessment proceedings itself. The circulars issued by CBDT have force of law as held by Hon'ble Supreme Court in the case of **Catholic Syrian Bank vs. CIT (343 ITR 270)**. Therefore, for this reason also, the penalty was not validly initiated and the penalty orders passed by Ld. Addl. CIT were bad-in-law.

4.7 Finally, the legal grounds urged by the assessee were allowed and consequently, the issue, on merits, was not dealt with. Similar adjudication was done in all the other appeals also. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

5. From the given facts, it emerges that an assessment was framed against the assessee u/s 153C on 28.09.2021 accepting the returned income filed by the assessee. In the assessment order, no penalty, whatsoever, has been initiated against the assessee. The assessment proceedings stem from search action by department u/s 132 in the case of M/s Vels Group of Education and ors. on 19.03.2019 wherein certain

incriminating material was found. After recording requisite satisfaction u/s 153C, Ld. AO initiated proceedings u/s 153C and completed the assessment accepting the returned income filed by the assessee.

6. After considering the seized incriminating material, Ld. AO proceeded to levy impugned penalty u/s 271D on the assessee and made proposal to Addl. CIT who is an appropriate authority to levy such penalty. In the seized material which is found from third party premises, it was alleged that the assessee received cash loan of Rs.75 Lacs in violation of provisions of Sec.269SS of the Act. This allegation was on the basis of presumption u/s 132(4A) which provide that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person and the contents of such books of account and other documents are true. However, this presumption is rebuttable one and operates only against the person in whose possession the books of account, other documents, money, bullion, jewellery or other valuable article or thing is found. The assessee is a third party and therefore, this presumption could not be raised against the assessee. So far as the assessee is concerned, he has denied having received any such loan. The assessee also submitted that it had no connection with the cash payments and receipts as mentioned in the seized material and it was completely one-sided entries by other group. To support the same, the assessee also filed confirmatory letter from the other party that no such cash transactions

have taken place between the assessee and the other group. No further enquiry has been made by Ld. AO to corroborate the receipt of loan by the assessee. The allegation is merely on the basis of one-sided entries found in the premises of a third party. Therefore, the impugned penalty could not be sustained considering this point.

7. It is also an undisputed fact that Ld. AO has moved a proposal to appropriate authority for initiation for proceedings u/s 271D on 26.05.2022 whereas the assessment order was passed on 28.09.2021. The proposal has been moved nearly 8 months after completion of assessment proceedings. The same is in violation of CBDT Circular no. 09/DV/2016 dated 26.04.2016 advising Assessing Officer to make a reference to the Range Head regarding violation of provisions of Sec.269SS and 269T during the course of assessment proceedings itself. Thus, the action of Ld. AO was in gross violation of departmental circular. Therefore, we confirm the findings of Ld. CIT(A) in that regard.

8. We further find that the case of the assessee is covered by the decision of Hon'ble Apex Court in the case of **CIT vs. Jai Laxmi Rice Mills (supra)** which specifically provide that no penalty could be levied u/s 271E without recording the satisfaction. This decision has been followed by Hon'ble High Court of Andhra Pradesh and Telangana in **Srinivasa Reddy Reddeppagiri vs. JCIT (332 CTR 0614 Telangana)**. The other decisions of Tribunal as referred to by Ld. CIT(A), in the impugned order, also follows the decision of Hon'ble Apex Court and supports the case of the assessee warranting deletion of impugned penalty. On the basis of the same, it could be said that the recording of satisfaction in the assessment order regarding the violation of provisions

of Sec.269SS was a mandatory requirement for valid initiation of penalty proceedings u/s 271D of the Act. No such penalty could be levied if AO failed to record such satisfaction in the assessment order. Therefore, in our considered opinion, Ld. CIT(A) has passed a well reasoned order deleting the impugned penalty. We confirm the same.

9. The material facts as well as issue, in the other three appeals, are identical. Therefore, our adjudication as above shall *mutatis mutandis* apply to all the other three appeals also.

10. In the result, all the appeals stand dismissed.

Order pronounced on 20th February, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :20-02-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF