

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 1289 & 1290/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2017-2018

Pearl Beach Promoters P. Limited
71/35, Aremanien Street,
IV floor, C Block,
Chennai 600 001.

The Assessing Officer,
v. Corporate Ward 5(1)
Chennai.

PAN: AAGCP 6990D

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Karunakaran, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri ARV Srinivasan, Addl. CIT,

सुनवाई की तारीख/Date of Hearing : 09.04.2024

घोषणा की तारीख/Date of Pronouncement : 03-06-2024

आदेश /ORDER

SHRI MANOJ KUMAR AGGARWAL, AM

1. Aggrieved by confirmation of certain penalty u/s 271D & 271E for Assessment Year (AY) 2017-18 vide impugned orders dated 23-10-2023, the assessee is in further appeal before us. The penalty levied u/s 271D is subject matter of ITA No.1289/Chny/23 whereas penalty levied u/s 271E is subject matter of ITA No.1290/Chny/2023.

2. The Ld. AR advanced arguments on legal grounds as well as on merits which have been controverted by Ld. Sr. DR. Having

heard rival submissions and upon perusal of case records, our adjudication would be as under.

Penalty Proceedings

3.1 Facts leading to penalty are that Ld. AO framed an assessment u/s 143(3) on 30-12-2019 making certain disallowances in the hands of the assessee. During the course of assessment proceedings, it transpired that the assessee received cash loans from certain directors and related concerns. Certain loans were also repaid in cash. The assessee submitted that the cash was received from the directors to meet the urgent expenses at the project site when the company did not have funds to meet the expenditure. It was also submitted that the directors were having sufficient sources. However, rejecting the same. Ld. AO proposed penalty u/s 269SS and 269T and made reference to appropriate authority i.e., Ld. Jt. CIT, Corporate Range-5 for imposition of the penalties.

3.2 The Ld. JCIT initiated penalty on 26-05-2022 and issued notice to the assessee. It transpired that the assessee accepted cash of Rs.36.16 Lacs from directors and related concerns. The assessee assailed the same on the ground that loans were taken for immediate requirement for business needs and the same were genuine. The intention of the legislatures in enacting these provisions was to curb black money brought in the guise of the loans. The assessee also took a legal argument that proceedings u/s 271D would be barred by limitation in terms of decision of Hon'ble Delhi High Court in the case of **Pr. CIT vs. Mahesh Wood**

Products Pvt. Ltd. (82 Taxmann.com 39) holding that date of initiation of penalty would be the date on which the case was referred to the concerned authority. If that date is reckoned, the proceedings initiated after lapse of more than 2 ½ years would be time barred. The proceedings should be initiated within a reasonable period.

3.3 However, Ld. JCIT rejected the merits of the case by observing that when the loans were taken, the assessee had sufficient bank balance for its needs. The legal ground was rejected in terms of CBDT Circular No.9/DV/2-016 dated 26-04-2016 directing that time barring date for initiation of penalties u/s 271D & 271E would start from show-cause notice issued by JCIT. Accordingly, Ld. JCIT imposed penalty of Rs.36.16 Lacs vide its order dated 29-11-2022. Similar penalty was levied u/s 271E on same date.

3.4 During appellate proceedings, the assessee drew attention to various factual errors and assailed the penalty on multiple grounds by relying on various judicial decisions. One the argument was that the assessee was carrying on construction at remote sites where banking facilities were not available. The directors provided funds at the site for immediate needs for the labors payments and other expenses at the site. It was not possible at that time to go to the bank and withdraw the amounts for disbursements at the sites. The directors were able to provide the needed funds immediately at the sites. Simply because the assessee had sufficient bank balance, the same would not be the reason to impose impugned penalties.

3.5 However, Ld. CIT(A) held that in terms of Sec.273B, the assessee failed to establish reasonable cause for breach. The payments to labor and other expenditure at the sites were not foreseen events. Therefore, Ld. CIT(A) confirmed penalty except to the extent of verification of one loan of Rs.5 Lacs since the same was stated to be received through bank account. The ground on limitation was also rejected in terms of Sec.275. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. The first and foremost argument of Ld. AR is that receipt / repayment of cash loans from directors would not be covered under the provisions of Sec.269SS and 269T. However, the same is to be rejected at the outset considering the fact that no such exception has been carved out in either of these statutory provisions. When the statutory mandate is clear, applying the doctrine of literal construction, no violence could be done to the explicit language of statute. Therefore, we reject these arguments of Ld. AR.

5. So far as the limitation argument is concerned, we find that the assessment was framed on 30-12-2019 wherein Ld. AO made reference to appropriate authority for imposition of impugned penalties. The Ld. JCIT issued show-cause notice to the assessee on 26-05-2022 and completed penalty proceedings on 29-11-2022 which is well within the prescribed statutory limit. The argument that there was inordinate delay between the date of reference and issue of show-cause notice is to be rejected considering the fact that substantial period falls within lockdown situation arising out of

Covid-19 Pandemic and therefore, this period is to be excluded for all limitation purposes. Therefore, this argument also does not find favor with us.

6. Coming to the merits of the case, it is undisputed fact that the assessee is in the business of construction of resorts apartments at Courtallam whereas the assessee is located at Chennai. Both the places are at substantial distance. The nature of assessee's business is such that it would require frequent / regular labor payment and other expenditure at project sites. Though the assessee may be having sufficient bank balances, it may not have been always possible to arrange funds through banking channels at the project site. In such a case, it was quite possible that cash loans were taken from directors and the same were repaid as and when the funds were made available with the assessee. All these loans are not from any third-party but are only from the directors and related concerns which lend credence to the argument of business exigency as taken by the assessee before lower authorities. Therefore, in our considered opinion, this is not a fit case for levy of impugned penalties. By deleting both the penalties, we allow the appeals of the assessee.

7. Both the appeals stand partly allowed.

Order pronounced on 3rd June, 2024

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 03-06-2024
KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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