IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Girish Agrawal (AM)

I.T.A. No. 4324/Mum/2023 (A.Y. 2010-11)

M/s. Ravi Nirman Nigam Limited 76, Laxmi Palace, Mathuradas Road Kandivali West Mumbai- 400 067. PAN : AAACR6729E	Vs.	ACIT, Circle-13(3)(1) Room No. 481 4th Floor Aayakar Bhavan M.K.Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	None
Department by	Smt. Mahita Nair
Date of Hearing	01.07.2024
Date of Pronouncement	10.07.2024

O R D E R

Per Satbeer Singh Godara (JM) :-

This assessee's appeal for A.Y. 2010-11, arises against the National Faceless Appeal Centre "NFAC", Delhi dated 20.09.2023 in proceedings under section 271D of the Income Tax Act 1961 in short "the Act".

2. Case called twice. None appears at assessee's behest. We accordingly proceed ex-parte against the taxpayer.

3. Coming to the sole substantive issue of correctness of section 271D penalty amounting to Rs. 15,60,300/- levied in both the lower proceedings, it emerges at the outset that there is hardly any requirement for us to deal with the relevant factual matrix at length. This is for precise reason that the tribunal's learned coordinate bench's common order is assessee's connected case ITA Nos. 4121, 4140 & 4141/Mum/2023, involving the very search

dated 15.10.2013 in the premises of M/s. Dharmadev Infrastructure Ltd., has accepted its stand and rejected Revenue's arguments supporting section 271D & 271E penalty(ies),as the case may be, involving varying sums as under :-

> "2. All the three appeals relate to common issues in respect of imposition of penalty u/s. 271D and 271E for AY 2011-12 and AY 2010-11. Since, similar issue is involved in all the three appeals, we take them up together by passing a consolidated order. For the purpose of drawing the facts, we take up appeal in ITA No. 4140/MUM/2023 for AY 2011-12 in which penalty u/s. 2701E of ₹11,40,000/- is imposed.
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> 3. In ground No.1, assessee has challenged the imposition of penalty by submitting that the reassessment proceedings which had been quashed by the Hon'ble ITAT and therefore the penalty proceedings do not survive.
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> 4. Brief facts of the case are that assessee is engaged in real estate business. It filed its return of income for AY 2011-12 by reporting the total income at nil. Case of the assessee was reopened u/s. 147 by issuing notice u/s. 148 on 30.03.2018. In the reasons to believe recorded by the ld. Assessing Officer, it was noted that information was received from the office of, ACIT, Central Circle-2(4), Ahmedabad. It was stated that during the course of search on 15.10.2013 at the premises of the Dharmadev Infrastructure Limited, 36 benami accounts were identified out of which one of them belonged to the assessee. There were deposits in this account which included cash deposits. In the course of reassessment proceedings, detailed submissions were made. After being satisfied with the explanations, no addition was made on this account by the ld. Assessing Officer while passing reassessment order under section 143(3) r.w.s. 147 dated 24.12.2018. In the same reassessment, ld. Assessing Officer had alleged that there are certain transactions of loan taken and repayment made, which were carried out by the assessee by means other than by way of account pay cheque/bank draft, therefore there is a violation u/s. 269SS and 269T of the Act. Ld. Assessing Officer did not find the explanations furnished by the assessee, satisfactory and hence initiated penalty proceedings u/s. 271D and 271E of the Act. Order imposing penalty was passed on 14.11.2019.
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> 5. In the meanwhile, assessee had contested the initiation of proceedings u/s. 147 of the Act before the Co-ordinate Bench of ITAT, Mumbai for both the assessment years that is AY 2010-11 and AY 2011-12 vide appeal numbers, ITA 6428 and 6429/MUM/2019 for which the order was pronounced on 27.04.2022. Before the Coordinate Bench, it had taken a specific ground vide ground No.5, challenging that ld. CIT(A) had erred in confirming the action of ld. Assessing Officer in initiating the penalty proceedings u/s. 271D and 271E without appreciating the fact that no addition has been made with respect to the reasons recorded for reopening

of assessment, as such, the reassessment order is bad in law and liable to be quashed.

6. The Co-ordinate Bench gave its decision quashing the reassessment order passed in the case of the assessee by holding that any material found during the search can be applied to initiate proceedings u/s. 153C of the Act, not u/s. 147 of the Act. The Co-ordinate Bench agreed with the ground raised by the assessee that the proceedings initiated u/s.147 of the Act is void, ab initio. The relevant paragraph in this respect from the said order is reproduced as under:

> "10. Respectfully following the above said decision, any material found during the search can be applied to initiate proceedings only u/s. 153C of the Act, not under section 147 of the Act. Accordingly, we are in agreement with the grounds raised by the assessee that the proceedings initiated u/s. 147 of the Act is void ab initio. Accordingly, any proceedings relating to the above assessment is also becomes invalid. Accordingly, the appeal filed by the assessee is allowed in this regard.
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> We have not adjudicated the main grounds of appeal at this stage and kept it open.
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> 11. Coming to the appeal relating to A.Y. 2011-12, since facts in this appeal are mutatis mutandis, therefore the decision taken in A.Y. 2010- 11 is applicable to this assessment year also. Accordingly, this appeal is also allowed."

6.1. In view of the above decision of the Co-ordinate Bench, assessee strongly submitted before the ld. CIT(A) that when the reassessment proceeding itself has been quashed, the penalty proceedings so initiated by the ld. Assessing Officer would not survive and therefore the penalty so imposed ought to be deleted. Ld. CIT(A) did not accept the claim of the assessee by holding that penalty proceedings are distinct from assessment proceedings. According to him, levy of penalty u/s. 271E of the Act is not dependent on the outcome of the assessment order. While giving these observations, to hold against the assessee, ld. CIT(A) had also noted that, penalty proceedings emanate from the assessment proceedings. The appeal of the assessee was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, ld. Counsel for the assessee strongly emphasized on ground No.1 taken before us. He placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. M/S Jayalakshmi Rice Mills [2015] 379 ITR 521 (SC), wherein the Hon'ble Court was concerned with the question as to whether penalty proceeding u/s. 271D of the Act is independent of the assessment proceeding. The decision given by the Hon'ble Court is crisp and to the point, directly dealing with the issue before us. The same is reproduced as under for ease of reference.

“In these appeals, we are concerned with the question as to whether penalty proceeding under Section 271D of the Income Tax Act (hereinafter referred to as "the Act") is independent of the assessment proceeding and this question arises for consideration in respect of Assessment Years 1991-1992 and 1992-1993 under the following circumstances:

In respect of Assessment Year 1992-1993, assessment order was passed on 26.02.1996 on the basis of CIB information informing the Department that the assessee is engaged in large scale purchase and sale of wheat, but it is not filing income tax return. Ex-parte proceedings were initiated, which resulted in the aforesaid order, as per which net taxable income of the assessee was assessed at ₹ 18,34,584/-While framing the assessment, the Assessing Officer also observed that the assessee had contravened the provisions of Section 269SS of the Act and because of this the Assessing Officer was satisfied that penalty proceedings under Section 271E of the Act were to be initiated.

The assessee carried out this order in appeal. The Commissioner of Income Tax (Appeals) allowed the appeal and set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity to the assessee.

After remand, the Assessing Officer passed fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings under Section 271E of the Act was recorded. It so happened that on the basis of the original assessment order dated 26.02.1996, show cause notice was given to the assessee and it resulted in passing the penalty order dated 23.09.1996. Thus, this penalty order was passed before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in this backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of original assessment order and when that assessment order had been set aside, could still survive.

The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under Section 271E would also not survive, This according to us is the correct proposition of law stated by the High Court in the impugned order.

As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section

271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied.

These appeals are, accordingly, dismissed."

8. Per contra, ld. Sr. DR placed reliance on the orders of authorities below to submit that levy of penalty u/s. 271D and 271E of the Act is not dependent on the outcome of the assessment order and that the penalty proceedings are distinct from assessment proceedings even though they emanate from the assessment proceedings. She placed reliance on the following decisions:

I. Dilip Kumar Panachand vs. Addl. CIT in ITA No. 3173/Ahd/2010 dated 05.08.2011 by Co-ordinate Bench of ITAT, Ahmedabad.

II. CIT vs. Canara Housing Development Co. in ITA No.382 of 2009 dated 18.08.2015 by Hon'ble High Court of Karnataka.

8.1. In the rebuttal, ld. Counsel for the assessee submitted that the decisions referred by the ld. Sr. DR do not deal with the facts of the present case where the assessment in itself has been quashed as void ab initio by the Co-ordinate Bench of ITAT. In these decisions, imposition of penalty u/s. 271D and 271E have been dealt on merits of the case describing when such a penalty is imposed. These decisions are distinguishable on the facts of the case. To buttress his contention, he placed reliance on the decision of Co-ordinate Bench of ITAT, Chandigarh in the case of DCIT vs. Karan Empire Pvt. Ltd. in ITA No.409/Chd/2011 dated 16.02.2017. In this case, while dealing with identical issue, the Co-ordinate Bench noted that -

"it is not disputed that the penalty was initiated in the assessment order which was passed u/s.153A r.w.s.143(3), dated 21.08.2009. It is also not disputed that the said order has been unedited and rendered invalid by the Hon'ble ITAT in its order passed in the case of the assessee, in C.O. No.13/CHD/2011 dated 22.12.2016"

8.2. The Co-ordinate Bench took note of the findings given by it while disposing the quantum appeal whereby it was stated that:-

"the respective assessment framed under section 153 of the act in these cases are held to be invalid. Since, the legal issue raised by the assessee is allowed, therefore, no findings are given in respect of the other issues raised by the assessee, and we do not see any merit in the appeals of the department."

8.3. From the above, it was pointed out that similar facts exist in the case of the assessee also, where the quantum reassessment order has been quashed as void ab initio without dealing with the other issues on merit. It was further submitted that the Co-ordinate Bench had also considered the

ratio laid down by the Hon'ble Apex Court in the case of Jai Laxmi Rice Mills (Supra) which dealt with the issue that with the annulling of the initial assessment order passed in the case of the assessee by the ITAT, the penalty initiated therein u/s. 271D also did not survive.

9. We have heard the rival contentions and perused the material on record. Admittedly, it is a fact on record that the reassessment proceedings, u/s. 147 of the Act in the course of which penalty proceedings u/s. 271D and 271E were initiated have been quashed as void ab initio by the Co-ordinate Bench. This fact was put forth before the ld. CIT(A) by the assessee but has been negated to upheld the penalty imposed by the ld. Assessing Officer. Based on these facts, we have perused the order of the Hon'ble Apex Court in the case of Jayalakshmi Rice Mills (supra), and find that it clearly applies in the present case to hold that with the quashing/annulling of the reassessment order passed in the case of the assessee by the ITAT, the penalty initiated there in u/s. 271D did not survive.

10. We also take note of the distinguishing facts brought before us in respect of the judicial precedents relied upon by the ld. Sr. DR and we agree with the same. We also note that the contentions put forth by the ld. Sr. DR have been dealt with by the Co-ordinate Bench of ITAT in the case of Karan Empire Pvt. Ltd. (supra) in paragraph 9, wherein it is noted as under: " though undeniably, there is a difference in the facts of both the cases as in the case before the Hon'ble Apex Court, the assessment had been set aside with the direction to frame a fresh assessment. While in the present case before us, the assessment order passed has been held to be invalid, the proposition laid by the Hon'ble Apex Court Hon'ble Apex Court still applies since the ultimate effect of the facts in both the cases still results in the original assessment order, not surviving, as also the satisfaction recorded therein for the purpose of initiation of penalty proceedings under section 271E/271D of the Act."

10.1. Considering the facts on record and the judicial precedents dealt in above, more importantly, by placing reliance on the decision of the Hon'ble Supreme Court, in the case of Jayalakshmi Rice Mills (supra), and the decision of the Co-ordinate Bench of ITAT, Chandigarh in the case of Karan Empire Pvt. Ltd. (supra), which has dealt with the decision of Hon'ble Supreme Court as well as similar contentions put forth by ld. Sr. DR, we delete the levy of penalty u/s. 271E of the Act amounting to ₹11,40,000/-. Accordingly, ground No.1 taken by the assessee is allowed. All other grounds taken by the assessee are thus, rendered academic in nature.

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

12. Since identical issues are involved in the other two appeals in ITA No. 4141/MUM/2023 and in ITA No. 4121/MUM/2023, our observations and findings arrived at in the above paragraphs, applies mutatis mutandis in these two appeals also. Accordingly, these two appeals are also allowed."

4. We make it clear that the Revenue has not been able to pinpoint any distinctive on facts or law as the case may be, in all these appeals. Faced with this situation, we adopt judicial consistency to delete the impugned section 271D penalty of Rs. 15,60,300/- in very terms.

5. This assessee's appeal is allowed.

Order pronounced in the open court on 10th July, 2024.

Sd/-	Sd/-
(Girish Agrawal)	(Satbeer Singh Godara)
Accountant Member	Judicial Member

Mumbai : 10.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)

PS ITAT, Mumbai