

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.. 424 & 425/JP/2024
निर्धारण वर्ष / Assessment Year : 2006-07

Shri Kailash Chand Goyal B-21, Jagdish Prasad Suresh Chand New Mandi, Gangapur	बनाम Vs.	The Addl. CIT Swaimadhopur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABNPG 3249 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri C.M. Birla, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 26/06/2024
उद्घोषणा की तारीख / Date of Pronouncement: 10 /07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

Both these appeals have been filed by the assessee against two different orders of the ld. CIT(A) dated 14-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2006-07 in the matter of Section 271D and 271E of the Act respectively, raising ground of appeal as mentioned at Form No. 36 in respective appeals.

2.1 At the outset of hearing of the appeals, it is noticed that the assessee was ex-parte before the ld. CIT(A) in respect of both the appeals i.e. Section 271D and

271E of the Act. It is further noticed that the Id. CIT(A) while deciding the appeals of the assessee has rejected the claims of the assessee on merit after considering the written submission. The narration as made by the Id. CIT(A) in respect of the above appeals are as under:-

“Appeal u/s 271D

“15.2 I have gone through the facts of the cases, the penalty order and submissions of the appellant. The appellant has tried to paint the picture with different brush by treating these transactions as mere arrangement of keeping someone’s money in his safeguard so that the does not come into the ambit of violation of Section 269SS. The above said amounts are clearly loans/ deposits taken/ accepted by the assessee in violation of Section 269SS of the Act. Thus, I do not concur with the appellant’s submission and hence penalty levied is upheld.

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17. In the result, the appeal is dismissed.”

“Appeal u/s 271E

“12.3 I do not concur with the appellant opinion.. The appellant has tried to paint the picture with different brush by treating these transactions as mere arrangement of keeping someone’s money in his safeguard so that the does not come into the ambit of violation of Section 269SS. The above said amounts are clearly loans/ deposits taken/ accepted by the assessee in violation of Section 269SS of the Act. Thus, I do not concur with the appellant’s submission and hence penalty levied is upheld.

12.4 The contention that assessee has not paid any interest while repaying the said amount and hence the sum

cannot be treated as loan does not hold good as Section 269T does not talk about applicability of interest of any level. Charging of interest is not a mandatory term / condition within the purview of Section 269T.

12.5 Regarding the appellant's claim of genuineness of the transaction is not sufficient but reasonable it to be stated for acceptance of loans in cash. Reliance is placed on the judgement of Hon'ble Pune Tribunal in the case of ITO vs Sunil M Kasliwal (2005) 94 ITD 281 TTJ 01/(2004) 2 SOT 596 (TM)(Pune)(Trib) had adjudicated on identical footing.

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12.6 In view of above, the appellant has violated the provisions of Section 269T and hence he liable for imposing penalty u/s 271E. Thus penalty levied u/s 271E is upheld. Thus Ground No. 7(i) to (vii) are dismissed.

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14. In result, the appeal is dismissed.”

2.2 During the course of hearing, the ld. AR of the assessee specifically argued that no sufficient opportunity was granted by the ld. CIT(A) to put forth his submission. He further submitted that Since A.Y. 2015-16, the assessee is not filing income tax returns and therefore being not connected vide ITBA Portal, the assessee did not receive 08 notices detailed in para 4 of appeal order but it is also a fact that his address was with ld. CIT(A), NFAC and the Department was having access to him through other mode of communication, however, the ld. CIT(A) did not opt so. He further submitted that ld. CIT(A)/ NFAC erred in applying CBDT Circular No. 10/DV/2016 dated 26-04-2016 because in Rajasthan CBDT Circular No. 09/DV/2016 was applicable. Moreover, the ld. CIT(A) did not think

appropriate to deal with case laws cited by the assessee in his letter dated 06-05-2019. Hence, the ld. AR of the assessee submitted that assessee may be provided one more opportunity to advance his submissions and contest the case before the ld. CIT(A) in respect of both the appeals u/s 271D and 271E of the Act.

2.3 On the other hand, the ld. DR refuted the arguments of the ld. AR of the assessee and relied upon the orders of the ld. CIT(A).

2.4 After hearing both the parties and perusing the materials available on record, it is noted that the ld. CIT(A) passed ex-parte orders in respect of appeal of Section 271D and 271E for which the ld. AR of the assessee prayed for one more chance to contest the case before the ld. CIT(A) while as the ld. DR relied on the orders of the ld. CIT(A). The Bench feels that one more chance may be given to the Assessee to contest the case before the ld. CIT(A) for afresh adjudication and the assessee will submit the necessary documents / evidences concerning the above mentioned appeals. However, for lethargic and negligent action on the part of the assessee, a cost of Rs.2,000/- is imposed on the assessee and the same may be deposited in the Prime Minister Relief Fund and copy of the same shall be submitted to the ld. CIT(A) for proof and thus the appeals of the assessee are restored to the file of the ld. CIT(A) to decide it afresh by providing one more opportunity of hearing. Thus, the assessee will not seek any adjournment on

frivolous ground and remain cooperative during the course of proceedings and the appeals of the assessee are allowed for statistical purposes.

2.3 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by Id. CIT(A) independently in accordance with law.

3.0 In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 10/07/2024.

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

***Mishra**

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Kailash Chand Goyal, Gangapurcity
2. प्रत्यर्थी / The Respondent- The Addl. CIT, Swaimadhopur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 425/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar