

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE S.M.C.BENCH, INDORE
BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 84/Ind/2024
Assessment Year : 2015-16

| | | |
|---|----------------------------|--|
| Shri Piyush Juneja, 10,Anand Nagar, Khandwa | <u>बनाम/</u> Vs. | Jt.Commissioner of Income-tax, Range 4, Indore. |
| (Assessee / Appellant) | | (Revenue / Respondent) |
| PAN : AOLPJ9133N | | |
| Assessee by | Shri Gagan Tiwari, AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 30.07.2024 | |
| Date of Pronouncement | 01.08.2024 | |

आदेश/O R D E R

The captioned appeal is directed against the order of Ld. CIT(A) NFAC dated 11.07.2023 is arising out from the order u/s 271E of the Income-tax Act, 1961, dated 27.09.2022 framed by Ld. JCIT, Range 4, Indore.

2. The assessee has raised following grounds of appeal :-
1. *That the impugned penalty order dated 27.09.2022 is bad in law and arbitrary.*
 2. *That the impugned levy of penalty of Rs. 15,85,000/- is without jurisdiction and unjustified.*
 3. *The Id. NFAC erred in confirming levy of penalty u/s 271E without looking into aspect that there was reasonable cause for making repayment in otherwise manner and thus in light of section 273B no penalty was liable to be imposed.*

4. *That the Id. NFAC erred in confirming the invocation of provisions of section 269T of the Act without looking into the factum that there was bona fide transaction of repayment of loan or deposit by way of adjustment through book entries carried out in ordinary course of business as done by the appellant would not come within the mischief of the provisions of Section 269T of the Act and therefore levy of penalty u/s 271E of the Act is bad in law.*
5. *That the Id. NFAC & Id. AO failed to take note that section 269T postulates that if a loan or deposit is repaid by an outflow of funds, same has to be by an account payee cheques or demand draft. However, discharge of the debt in the nature of loan or deposit in a manner otherwise than by an outflow of funds would not be hit by the provisions of section 269T.*
6. *That the Id. NFAC & Ld. AO failed to look in the submission that bona fide transaction of repayment of loan or deposit by way of adjustment through book entries carried out in the ordinary course of business would not come within the mischief of the provisions of section 269T of the Act.*

3. Facts in brief are that the assessee is an individual and carries on business of Contractor and income of Rs. 12,16,420/- declared in the return of income for assessment year 2015-16 furnished on 29.09.2015. Case of the assessee selected for scrutiny and assessment u/s 143(3) of the Act completed on 14.06.2017 assessing income at Rs. 13,21,430/-. Subsequently, the Id. AO on going through the assessment record, noticed that there were observations of the auditor that certain loans exceeding Rs. 20,000/- have been repaid otherwise than by account payee cheques/draft. Since this issue was not examined during the assessment proceedings, Id. AO recorded the reasons and issued notice u/s 148 of the act. In the reassessment proceedings, the Id. AO referred to three transactions in which

Rs. 12 lakhs, Rs. 2 lakhs and Rs. 1,85,000/- standing as un-secured loan in the books of the assessee in the name of Balaji Construction, Sumit Juneja and Umesh Dixit were repaid otherwise than by A/c payee cheques/draft by way of journal entry in which the assessee raised sale invoices to these parties and cleared off the outstanding unsecured loan. Though it was claimed that these were genuine transactions, however, Id. AO was not satisfied and he invoked the penalty provisions of Section 271E of the Income-tax Act, 1961, for the alleged contravention of Section 269T of the Act as the assessee has made repayment of unsecured loan otherwise than by a/c payee cheques/draft. The income was assessed again with the same amount of Rs. 13,21,430/- as was assessed u/s 143(3) of the Act. Subsequently, the penalty order u/s 271E of the Act was framed levying penalty of Rs. 15,85,000/-. Though the validity of the reassessment proceedings have also been challenged separately by the assessee before Ld. CIT(A), but the same is still pending for adjudication before the Ld. CIT(A). However, against the penalty order u/s 271E of the Act, the appeal to Ld. CIT(A) has been decided against the assessee. In the appeal against the levy of penalty u/s 271E of the Act, the Ld. CIT(A) has dealt with this issue in detail and then held that there has to be a strict compliance to the provisions of section 269T of the Act and if there is any repayment of unsecured loan exceeding the limits prescribed u/s 269T of the Act otherwise than by a/c payee cheques/draft/net banking/debit card/credit card/IMPS/UPI/RTGS/NEFT/BHIM, then such repayments would be in

contravention of provisions of Section 269T of the Act. The Ld. CIT(A) has, thus, confirmed the penalty u/s 271E of the Act.

5. Aggrieved, the assessee is now in appeal before this Tribunal.

6. The Ld. Counsel for the assessee referred to the paper book containing 83 pages, which also includes certificate of C. A. certifying that the repayments of loans were cleared off against sale bills and applicable taxes were collected on the sale bills and such sales are forming part of the gross turnover of the assessee. Reference was also made to detailed written submission filed before the NFAC, wherein it has been submitted that the transactions of making sales against the outstanding loans is a genuine transaction and since alleged transactions were not made with the intention of evading tax and that the transaction is a bona fide transaction, therefore, the assessee deserves to get the immunity u/s 273-B of the Act as there was a reasonable cause for the said failure, which, in this case, is a contravention of Section 269T of the Act. He further submitted that the assessee had not made any payment in cash and only the sale bills have been raised to the alleged parties. It would have been completely impracticable if the assessee, first, had raised the sale bills and then received the payment from the parties and then diverted those payments back to the alleged parties to clear off the accounts. Once the alleged parties are having business transaction with the assessee with regard to the unsecured loans and also to make sales, the assessee in a bona fide belief raised sale bills and cleared off the accounts. Though the reference has been

made to the plethora of decisions mentioned in the written submission filed before NFAC, heavy reliance was placed on the recent decision of Coordinate Bench of Chandigarh in the case of *Gurinder Makkar vs. Dy. CIT, (2024) 158 taxmann.com 155 (Chandigarh – Tribe)*.

7. On the other hand, the Ld. Departmental Representative supported the order of Ld. CIT(A) stating that Section 269T of the Act calls for a strict compliance and any deviation from the same deserves to levy of penalty u/s 271E of the Act. He submitted that the Hon'ble Supreme Court in the case of *Principal CIT vs. Shakti Foundation, (2019) 107 taxmann.com 460 (S. C.)* has admitted the S.L.P. on the very same issue, where repayment of loans have been taken place to journal entries.

8. I have heard the rival contentions and perused the records placed before me. The only issue for my consideration is whether the Ld. CIT(A) has erred in confirming the penalty of Rs. 15,85,000/- levied u/s 271E of the Act for alleged contravention of Section 269T of the Act, which is with regard to the payment of unsecured loan accepting Rs. 20000/- otherwise than by a/c payee cheques/draft. Admittedly, certain unsecured loans were standing in the books of the assessee and the assessee repaid unsecured loans of Rs. 12 lakhs, Rs. 2 lakhs and Rs. 1,85,000/- taken from parties, namely, Balaji Construction, Sumit Juneja and Umesh Dixit (all based at Khandwa) respectively. The assessee rather than making payment through a/c payee cheques/draft/other banking modes as referred in para 4.2.3 of the impugned order, cleared off the unsecured loan by way of journal entries,

which, in this case, was by effecting sales bills to the above referred three parties. The Revenue Authorities have nowhere disputed the genuineness of the sale transaction wherein the assessee has raised the sale invoices, charged the applicable indirect taxes and have also placed the copies of the bills on record. It is also an admitted fact that books of accounts of the assessee are duly audited and the sales made to alleged three parties are forming part of the gross turnover. The assessee under a bona fide belief and also in order to avoid repetitive transactions for firstly making the repayment of outstanding loan and then again taking payment against the sales, adopted this mode of repaying the loan by way of making sales and clearing off the loan account. Though the Ld. Departmental Representative has referred to the judgement of the Hon'ble Apex Court admitting the SLP of the revenue on the same issue, but there is no final judgment of the Hon'ble Apex Court till now on this issue and the same will be dealt with by the Hon'ble Court in the time to come. However, as of now plethora of decisions are in favour of the assessee and the recent one has been rendered by the Coordinate Bench Chandigarh in the case of Gurinder Makkar vs. Cy. CIT, (2024) 158 taxmann.com 155, wherein similar types of issue came before this Tribunal, where the sale consideration of knitted cloth was adjusted against the outstanding loan amount. Finding of this Tribunal holding in favour of the assessee reads as follows :-

" 6. We have heard the rival contentions and pursued the material available on record. The penalty has been levied on the assessee u/s 271E for contravention of provisions of section 269T of the Act. As per the Id. Additional CIT, it is a case of repayment of unsecured loan of an amount of Rs 6,38,000/- in cash to Shri Vipin Kumar which is beyond the limits specified u/s 269T as well as the fact that the repayment has been made in a mode other than through cheque, draft or use of electronic clearing system through a bank account and hence, there is contravention of provisions of section 269T of the Act.

7. As we have noticed from the records and material before us, the genesis of the show-cause as well as subsequent findings in the penalty order as well as the appellate order is the tax audit report wherein the transaction with Shri Vipin Kumar has been reported by the tax auditor.

8. In the tax audit report for the financial year ended 31/03/2017, it has been reported by the tax auditor in negative wherein he has been asked to state whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account. Basis the same, the Additional CIT has held that it is a case of repayment of loan in cash and hence, the violation of section 269T of the Act.

9. The Id. Additional CIT has further examined and looked at the tax audit report for the earlier financial year ended 31/03/2015 wherein the tax auditor has reported a sum of Rs 6,38,000/- received from Shri Vipin Kumar while reporting the transactions u/s 269SS, tax audit report for the financial year ended 31/03/2016 wherein the tax auditor has reported another sum of Rs 2,00,000/- received from Shri Vipin Kumar while reporting the transactions u/s 269SS and details of unsecured loan in balance sheet for the year ended 31/03/2016 wherein an amount of Rs 6,38,000/- has been shown against the name of Shri Vipin Kumar. Basis the same, it was held that by the Additional CIT that the assessee had initially accepted a sum of Rs 6,38,000/- as unsecured loan in financial year 2014-15 and another sum of unsecured loan of Rs 2,00,000/- during the financial year 2015-16 and thereafter, during the year under consideration, a sum of Rs 6,38,000/- has been repaid in cash otherwise than through the cross cheque or bank draft or ECS in contravention of provisions of section 269T of the Act.

10. The Id. Additional CIT has not accepted the assessee's explanation that it is a case of sale of knitted cloth to Shri Vipin Kumar for the reason that the assessee has failed to prove the delivery and mode of transportation and secondly, it is not a case of any rare or scarce item for which any customer will make advance payment and wait for good two years for the items to be supplied. The Additional CIT has held that there has been no such transaction of sale of knitted cloth as claimed by the assessee.

11. It has been further held by the Id. Additional CIT that even where the assessee's submissions are considered, the repayment of loan by supplying goods would still fall in the ambit of contravention as so specified in section 269T

and he has accordingly levied the penalty u/s 271E of the Act.

12. The Id CIT(A) has confirmed the findings of the Id Additional CIT holding that the assessee has not been able to controvert the fact that auditor has clearly recorded the violation of section 269T in the audit report.

13. Before us, it has been contended by the Id AR that if we read clause 31(c) of the Tax Audit report, only "yes" or "no" has to be mentioned in response to whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account. It was submitted that in the instant case, the tax auditor has stated "no" in the said column and the Additional CIT has construed the said reporting as a case of repayment of loan in cash and hence, the violation of section 269T of the Act which is factually not correct. It was submitted that it is a case where there is no repayment in cash and it is a case where the amount of advance of Rs 6,38,000/- has been adjusted against sales made during the year and which has been duly reported in the trading account and necessary documentation has been placed on record.

14. It is not in dispute that the transaction undertaken by the assessee with Shri Vipan kumar has been reported by the tax auditor in the tax audit report as part of reporting of transactions specified u/s 269SS for the financial year ended 31/03/2015 wherein Rs 6,38,000/- has been received through cheques on various dates and thereafter, another transaction of Rs 2,00,000/- which has been received by the assessee through cheque and which has been reported as part of reporting of transactions specified u/s 269SS audit report for the financial year ended 31/03/2016. Thereafter, the tax auditor has reported the transaction by way of repayment of Rs 6,38,000/- as part of reporting of transactions specified u/s 269T of the Act for the financial year ended 31/03/2017.

15. The question that arises for consideration is whether the repayment of loans and deposits can be made only through any of the mode of transfer through the banking channel in terms of cheque, draft, ECS, etc or through cash or there could be a third mode of repayment whereby the assessee repays the amount in kind by selling the goods manufactured by him and adjusting the same against the amount received initially. In our understanding, the decision solely rest on the assessee and the other party and repayment could take one or more form of repayment and there is nothing in law that stops the assessee. Even where the transactions are initially construed and treated as loans or deposits, the repayment thereof could be mutually decided by way of repayment in kind and not necessarily through transfer of funds. The restrictions imposed u/s 269SS in terms of initial receipt of loans and deposits are in situations where the acceptance of loans and deposits is in cash beyond the prescribed threshold and restrictions imposed u/s 269T in terms of repayment of loans and deposits applies where the repayment is in cash beyond the prescribed threshold. The said rationale behind introduction of section 269SS has been explained by the CBDT in its explanatory circular no. 387 dated 6/07/1984 on the provisions of the Finance Act, 1984 whereby section 269SS was brought on the statue books and wherein it was stated that the

unaccounted cash found in the course of search carried out by the Income tax department is often explained by the tax payers as representing loans taken from or deposits made by various persons and with a view to counter this device, a new section 269SS is inserted debarring persons from taking or accepting any loan or deposit otherwise than by an account payee cheque or account payee demand draft aggregating to Rs 10,000 or more. Similar rationale thus applies in the context of repayment as provided u/s 269T of the Act. The Hon'ble Madras High Court in case of CIT vs Rugmini Ram Ragav Spinners (P) Ltd reported in (2008) 304 ITR 417 has similarly held that the rationale behind provisions of section 269SS and 269T is to prevent tax evasion i.e, laundering of concealed income by the parties in the guise of cash loans or deposits in or outside the accounts. Therefore, we do not agree with the findings of the Id. Additional CIT that even where the assessee's submissions are considered, the repayment of loan by supplying goods would still fall in the ambit of contravention as so specified in section 269T of the Act.

16. In light of above, the reporting of the transaction in the tax audit report by the tax auditor has to be examined taking into consideration the explanation so furnished by the assessee to determine whether there is any violation of section 269T or not in the instant case.

17. It has been explained by the assessee that an amount of Rs 6,38,000/- was received through cheque during the financial year ended 31/03/2015 and another sum of Rs 2,00,000/- through cheque during the financial year ended 31/03/2016 from Shri Vipankumar. It has been further submitted that the assessee has sold knitted cloth worth Rs 2,00,000 to Shri Vipankumar during the financial year ended 31/03/2016 and knitted cloth worth Rs 6,38,000/- to Shri Vipankumar during the financial year ended 31/03/2017 which is the year under consideration. It has been accordingly submitted that there is no repayment in cash rather the assessee has sold goods worth Rs 6,38,000/- and which has been adjusted against the amount standing to the credit of Shri Vipankumar and there is thus no violation of section 269T of the Act. In support of his explanation, the assessee has produced the ledger account of Shri Vipankumar, copy of sale bills raised on Shri Vipankumar, copy of the VAT return copy of sale register where the transactions with Shri Vipankumar are reported and the fact that the sales have been duly reported in the financial statements and accepted by the Revenue authorities without any adverse findings. The Id. Additional CIT has not accepted the assessee's explanation that it is a case of sale of knitted cloth to Shri Vipankumar for the reason that the assessee has failed to prove the delivery and mode of transportation ignoring the explanation of the assessee that goods were transported through the vehicle sent by Shri Vipankumar, and secondly, it is not a case of any rare or scarce item for which any customer will make advance payment and wait for good two years for the items to be supplied. The Additional CIT has held that there has been no such transaction of sale of knitted cloth as claimed by the assessee.

18. To our mind, the apprehension howsoever strong need to be supported by certain corroborative evidence and in absence thereof, the denial of existence of the transaction as so claimed by the assessee cannot be

upheld. In the instant case, the assessee has produced relevant documentation in support of his sale transactions which are reported in the financial statement and duly offered to tax and has also reported the same as part of its regular VAT filings with the VAT authorities. What further documentation is required from the assessee has not been specified nor has the existence of these documents been denied. There is no adverse findings recorded by the AO in accepting the sale transactions as part of the return of income and therefore, where the Additional CIT is disputing the same transaction while deciding the penalty matter, the same carries an additional burden which has not been discharged in the instant case. There was nothing which stops the Additional CIT in calling Shri Vipin Kumar and recording his statement in order to verify the authenticity of the explanation so submitted by the assessee. There was nothing which stops the Additional CIT in calling for the books of accounts which includes the cash book, sale register and other ledgers and examining the claim of the assessee that there was no cash payment and sales were made to Shri Vipin Kumar. However, nothing has been done in the instant case and merely basis the apprehension, the explanation of the assessee has been rejected.

19. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that there is no violation of section 269T in the instant case and levy of penalty u/s 271E is accordingly set-aside."

9. Examining the facts of the instant case, in the light of the above decision, I find that the same is squarely applicable on the facts of the instant case, since in the instant case also assessee has acted under bona fide belief and has entered into genuine transactions of making sales to the alleged parties with the intention to avoid multiplicity of the transaction of making double entry of first making the repayment through Bank and then again receiving the payment against the sales. Therefore, respectfully following the judicial precedence, I hereby set-aside the finding of the Ld. CIT(A) and delete the alleged penalty of Rs. 15.85 lakhs levied u/s 271E of the Income-tax Act, 1961.

10. In the result, the appeal if the assessee is allowed in terms as indicated above.

Order pronounced in the open court on 1st August, 2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 01.08.2024

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*