

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

Before Shri Pavan Kumar Gadale (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 4861/Mum/2023 (A.Y. 2015-16)

Pooja Ganesh Borhade 102, Purshuram Plaza Opp. Maruti Mandir Candhi Chowk Badlapur East Dist. Thane Maharashtra-421 503. PAN : ABIPB1241P (Appellant)	Vs.	JCIT, Range-2 Mahan Plaza Wayale Nagar Khadakpada Kalyan, Dist. Thane Maharashtra 421 301. (Respondent)
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Assessee by	Shri V.G. Ginde & Shri Kumar Kale
Department by	Shri H.M. Bhatt
Date of Hearing	10.07.2024
Date of Pronouncement	29.07.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In this case, the appellant Ms. Pooja Ganesh Borhade, the assessment was completed under section 143(3) of the Income Tax Act ('the Act' in short) for assessment year (A.Y. in short) 2015-16. The only issue to be decided in this appeal is whether levy of penalty for violation of provisions of section 269T is correct or not.

2. From the Ld. CIT(A) order it can be seen that the appellant has accepted loan to the extent of Rs. 158,89,062/- otherwise than by account payee cheque/account payee bank draft. Hence, it was mentioned that the assessee violated provisions of section 269T and penalty was imposed. As there is violation of provisions, the Ld. AO mentioned that it is a fit case for imposing penalty and consequently penalty was levied.

3. The Ld. CIT(A) has mentioned that seven opportunities were given to explain the reason for violation of provisions. From the order of first appellate authority, it is observed that the appellant has failed to furnish any concrete evidence relating to subject matter of the appeal. So both the lower authorities have concluded that the appellant has violated provisions of section 269T by accepting loan of Rs. 1,58,89,062/-. In view of the same, penalty levied by the Ld. AO was confirmed by the Ld. CIT(A).

4. Aggrieved by the order of the Ld. CIT(A), appellant filed an appeal before the ITAT stating that the order passed by ld AO is illegal and ab-initio and the Ld. CIT(A) erred in confirming the penalty imposed by the Ld. AO. During the hearing appellant raised additional ground as follows :-

“On the facts and in the circumstances of the case, and in law, the order dated 29.08.2018 imposing a penalty u/s. 271D of the Act is bad in law in as much as no satisfaction for initiating the penalty proceedings u/s. 271E was recorded by the Ld. AO in the relevant assessment year u/s. 143(3) dated 7.12.2017. The appellant, therefore prays that the penalty order dated 271E dated 29.8.2018 be quashed.”

5. The same ground is admitted and the appeal adjudicated now.

6. During the hearing before the ITAT, appellant has conceded that due to certain reasons beyond her control, could not respond to the notices of the Ld. AO and the Ld. CIT(A). As per the advise of some counsels, appellant wanted to avail Vivad Se Vishwas Scheme (VSVS), but later on changed her mind and did not avail scheme. As she has not availed the scheme, normal route of appeal is taken now. Ld AR of the appellant, has mentioned during the course of hearing before the Tribunal that all the receipts of loans are through banks only and they are properly reflected in the books of other party also. Ld AR has further argued that the case was not properly represented by other counsels before the lower authorities. Ld AR filed a paper book and tried to demonstrate that all the receipts are through bank

only and not by cash. Unfortunately, these facts were not presented before the Ld. AO and the Ld. CIT(A).

7. All these averments of Ld. AR of assessee are not coming out of the orders of the assessment and penalty. Hence, it is decided to remit the case back to the Ld. CIT(A) with the direction to take all the material on record and give an opportunity to decide the matter afresh with respect to levy of penalty. Before concluding this order, it is observed that the appellant was provided with several opportunities before the Ld. AO and the Ld. CIT(A) and there was no response from her. It is also observed that the appellant wanted to pay full taxes and avail VSVS but for the best known reasons to the appellant, scheme was not availed nor any taxes were paid as per this scheme. In view of these peculiar facts and circumstances, appellant is directed to pay cost of Rs. 5000/- to the Income Tax Department.

8. As mentioned above, the matter is remitted back to the file of the Ld. CIT(A). The appellant is directed to fully cooperate with the Department and furnish all the details without failure.

9. The Appeal is allowed for statistical purposes.

Order pronounced in the open court on 29th July, 2024.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 29.07.2024

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.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai