

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

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

I.T.A. No. 4860/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	31.07.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In this case of the appellant Ms. Pooja Ganesh Borhade, the assessment under section 143(3) of the Income Tax Act ('the Act' in short) for assessment year (A.Y. in short) 2015-16 was completed on 7.12.2017. Then the Assessing Officer ('the AO' in short) informed that on scrutinizing the books of account of the assessee during the course of assessment, the assessee repaid the loans to the extent of Rs. 1,78,30,365/-, which exceeds Rs. 20,000/- to certain loan creditors during the relevant financial year otherwise than by account payee cheque or account payee draft. The details of loans repaid by the appellant are mentioned as under :-

Sr.No.	Name of Loan Creditors	Amount of loan repaid by the assessee (in Rs.)
1	Ashtvinayak Enterprises	66,85,832
2	Deepal Gohlam	4,00,000
3	Ashtvinayak Enterprises	1,07,44,533
	Total	1,78,30,365

2. Before the JCIT, Range-2, Kalyan, the appellant submitted confirmation of ledger account of the loan creditors and it was also stated that the transactions were properly reflected in the books of account of the assessee concerned. Confirmation letters were also received from the above mentioned creditors in pursuance of notices issued u/s. 133(6) of the Act. But no reasons for repayment of loan otherwise than by account payee cheque, bank draft exceeding of Rs. 20,000/- were furnished by the appellant during the course of assessment proceedings. So, the Ld. AO has concluded that prima facie there is a case of violation of 269T of the Act. So, a notice u/s. 271E read with section 269T were issued to the assessee and penalty proceedings were initiated.

3. The appellant has not responded to this notice relating to imposition of penalty u/s. 271E of the Act. The AO issued one more letter dated 2.8.2018 as there is change of incumbent officer. From the assessee, there is no response to this second notice also.

4. In view of the above, the Ld. AO has concluded that the assessee has nothing to say with regard to penalty proceedings initiated u/s. 271E as she violated provisions by repayment of loan of Rs. 1,78,30,365/- during this A.Y. 2015-16. Hence, the Ld. AO passed the order by levying penalty of Rs. 178 lakhs, being sum equivalent to 100% loan repaid.

5. Aggrieved by the penalty order of the Ld. AO, the appellant filed an appeal before CIT(A)/National Faceless Appeal Centre (NFAC) on 5.10.2018. A notice u/s. 250 of the Act was sent by the appellant authority on registered

e-mail of the appellant. During the appellate proceedings, the appellant filed following grounds of appeal :-

- “1) Assessee is contractor. Firm supplying man power to industries.
 - 2) During the course of business, assessee had accepted various payments from its sister concerns. Due to non-availability of funds, the assessee sister concerns made various payments on behalf of assessee.
 - 3) The loan creditors are mostly sister concerns.
 - 4) The learned authority had initiate penalty proceeding against the said loan.
 - 5) The necessary documents claiming assessee claim shall be submit ted during appeal herewith.
 - 6) The appellant reserves rights to add grounds of appeal during appeal procedure.
 - 7) The aggrieved appellant does hereby request to take on record submission and take necessary action to delete penalty.”
6. The appellant has submitted before the first appellate authority that she is a director and the main function is to supply manpower to various industries. During the course of business, it was submitted that the appellant has accepted various payments from its sister concerns due to non-availability of funds and these loan creditors are mostly sister concerns of the appellant. It was mentioned by the appellant that during the appeal proceedings, necessary documents would be submitted and requested the appellate authority to take them on record and also delete the penalty levied by the AO. But the appellant neither responded nor filed any submission before NFAC. The appellant had submitted as follows :-

“d) In response to the appeal filed, I had received a notice for hearing dated 23-01-2019. However, I failed to comply with the same.

e) Owing to failure to comply with appeal proceedings, on advice of our legal counsel decided to opt for the Vivad Se Vishwas scheme as envisaged under The Direct Tax Vivad Se Vishwas Act, 2020 (DTVSV) and accordingly I had filed Form 1 & 2 dated 31-01-2021.

f) Subsequently I received Form 3 dated 31-05-2021 under the DTVSV requiring to pay the dues as determined.

g) However, during the period of May 2021 i.e. following the period during which I was required to pay the DTVSV dues, the COVID-19 pandemic had recouped and peaked. Now, we being labour/manpower supplier had already faced a huge financial set back during the COVID-19 pandemic and had to incur heavy losses, and to this pandemic recoup been compelled with financial hardship again. Consequently, we could not pay the dues as determined under the DTVSV scheme

h) Following the failure to pay the DTVSV dues, I have been involuntarily compelled to adhere to appeal procedures.”

7. Paragraph 5 of the appellate order dealt with the decision of the first appellate authority. From the order of the first appellate authority, it is noticed that the appellant was provided with multiple hearing opportunities to submit documentary evidence in support of the grounds of appeal on various dates as mentioned below :-

S. No	Hearing order date	Date of compliance	Remarks
1	23.01.2019	01.02.2019	No response received
2	01.03.2019	11.03.2019	No response received
3	09.04.2019	18.04.2019	No response received
4	22.07.2019	14.08.2019	No response received
5	29.12.2020	13.01.2021	Response filed on 06.07.2022
6	29.09.2023	05.10.2023	No response received
7	13.10.2023	19.10.2023	No response received

Thus, the first appellate authority has afforded seven opportunities to the appellant and one reply was filed on 6.7.2022. But no documentary evidences were filed in appeal substantiating the claim as well as grounds of appeal. So, based on the material on record, learned CIT(A) concluded that the appellant has violated provisions of section 269T by way of repaying loan otherwise than account payee cheque/draft. Hence, the learned CIT(A) has sustained the penalty order of the AO and accordingly grounds of appeal of the appellant were dismissed.

8. Aggrieved by the order of the learned CIT(A), the appellant has filed an appeal before the ITAT with following grounds of appeal :-

“Being aggrieved by the order dated 31.10.2023 passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi “Ld. CIT(A)” u/s 250 of the Income-tax Act, 1961 (“Act”), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and in law, the order dated 29.08.2018 imposing penalty u/s. 271E of the Act is illegal, *void ab initio* and bad in law as the same is barred by limitation since it was passed beyond the time provided u/s. 275(l)(c) of the Act. Your appellant, therefore, prays that order imposing penalty u/s. 271E dated 29.08.2018 of the Act be quashed.

2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in confirming the penalty imposed u/s. 271E of the Act of Rs.1,78,30,365/-. Your appellant, therefore, prays in alternative, and without prejudice, that the said penalty imposed u/s. 271E of the Act be cancelled.”

9. During the course of hearing before this Tribunal, the appellant has filed a paper book, which contains copy of audited accounts, copy of Form 3CB & 3CD, copy of assessment order under section 143(3), copy of AO’s letter dated 13.2.2018 forwarding information to the JCIT, copy of ledger accounts of M/s. Ashtavinayak Enterprises in the books of Shree Enterprises, copy of ledger account of M/s. Ashtavinayak Enterprises in the books of Siddhi Vinayak Enterprises, copy of ledger account of Kondiba Borhade in the books of Shree Enterprises, copy of ledger account of Gunanidhi Adhikari in the book of Siddhi Vinayak Enterprises, copy of ledger account of Deepak Gholam in the books of Siddhi Vinayak Enterprises, copy of ledger account of Shree Enterprises in the books of Ashtavinayak Enterprises, bank account of Shree Enterprises and Siddhi Vinayak Enterprises and appellant has also certified that all these papers were on record of the departmental authorities.

10. During the course of hearing before this Tribunal, learned AR of the appellant has mentioned that most of these payments are through banks

only and they were reflected in the books of loan creditors who also filed Return of Income properly. It was argued by Ld. AR of the appellant that the case was not properly presented by Ld. counsel before the lower authorities. The actual payments are made through bank only but by mistake, this fact was not presented before the AO and the Ld. CIT(A). As the facts mentioned by learned counsel are not coming out of the penalty order of the Ld. CIT(A), it is decided that the case is remitted back to the Ld. CIT(A) who confirmed the penalty with the direction to take all material on record and give an opportunity and decide the matter afresh with respect to levy of penalty u/s. 271E of the Act. From the paper book filed before this Bench, it is observed that the appellant was provided with seven opportunities by the first appellant authority and two opportunities by the AO who levied penalty and there is no response by the appellant. It is also observed that the appellant wanted to pay full tax and avail Vivad Se Vishwas Scheme but for the best known reasons to the appellant, the Scheme was not availed and no taxes were paid as per this Scheme and now the appellant came through normal route of filing the appeal before the ITAT. In view of these circumstances, the appellant is directed to pay cost of Rs. 5,000/- to the Income Tax Department.

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

12. The appeal of appellant is allowed for statistical purposes.

13. The appeal is allowed.

Order pronounced in the open court on 31st July, 2024.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 31.07.2024

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//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai