IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 1112 & 1113/Bang/2024
Assessment Years : 2017-18

Srinaga, No. 72, Main Road, Magadi – 562 120. Ramanagara Dist. **PAN: ASQPS2340C**	**Vs.**	The Income Tax Officer, Ward – 1, Ramanagara.
APPELLANT		**RESPONDENT**

Assessee by	:	Ms. Suman Lunkar, CA
Revenue by	:	Shri Subramanian .S, JCIT – DR

Date of Hearing	:	09-07-2024
Date of Pronouncement	:	08-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present penalty appeals arises out of orders dated 02.04.2024 by NFAC, Delhi for A.Y. 2017-18 u/s. 271D & 271E on following grounds of appeal:

ITA No. 1112/Bang/2024

> *"1.1 The learned CIT(A) has erred in confirming the order passed levying penalty u/s 271D of the Act without hearing the appellant and Such order is in total violation of*

principles of natural justice is bad in law and void ab-initio and is liable to be quashed.

1.2 Without prejudice, the impugned order levying penalty having not been passed by the Income Tax authority authorized under section 271D is without jurisdiction, void ab initio, bad in law and is liable to be quashed.

2.1 In any case, the authorities below have erred in not appreciating the fact that the initiation of penalty proceedings and consequential order passed levying penalty u/s 271E of the Act are barred by limitation and erred in confirming the validity of the order instead of quashing the impugned order as barred by limitation.

2.2 Without prejudice, the penalty proceedings u/s 271D having been initiated after a long delay of almost 2 years make the entire proceedings barred by limitation and the impugned order levying penalty is liable to be quashed.

2.3 In any case there being no proper satisfaction recorded in the assessment order for violation of provisions of section 2b9SS which would lead to initiation of penalty proceedings u/s 271D of the Act and there being no reference for initation of penalty to the prescribed authority make the penalty proceedings and the impugned order bad in law and such an order is liable to be quashed.

3. In any case, the learned CIT(A) has erred in confirming the levy of penalty of Rs. 5,75,000/- of the Act u/s 271D of the Act on the ground that the appellant has violated the provisions of section 269SS of the Act by accepting loan beyond the prescribed limit. On proper appreciation of facts and law applicable, the penalty as levied and confirmed being erroneous is to be deleted. .

4. The authorities below have erred in not appreciating that
(a) the genuineness of the transactions were not doubted
(b) there was a reasonable cause for accepting money in cash
(c) there was no conscious disregard / contravention of the statutory obligation or defiance of law;
and have erred in levying/confirming the penalty u/s 27ID of the Act.

On facts and circumstances of the case and the law applicable, the penalty as levied /confirmed is to be deleted.

5. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast or in the alternative, the penalty as levied/confirmed be deleted."

ITA No. 1113/Bang/2024

"1. The learned CIT(A) has erred in confirming the order passed levying penalty u/s 271E of the Act without hearing the appellant and Such order is in total violation of principles of natural justice is bad in law and void ab-initio and is liable to be quashed.

1.2 Without prejudice, the impugned order levying penalty having not been passed by the Income Tax authority authorized under section 271E is without jurisdiction, void ab initio, bad in law and is liable to be quashed.

2.1 In any case, the authorities below have erred in not appreciating the fact that the initiation of penalty proceedings and consequential order passed levying penalty u/s 271E of the Act are barred by limitation and erred in confirming the validity of the order instead of quashing the impugned order as barred by limitation.

2.2 Without prejudice, the penalty proceedings u/s 271E having been initiated after a long delay of almost 2 years make the entire proceedings barred by limitation and the impugned order levying penalty is liable to be quashed.

2.3 In any case there being no proper satisfaction recorded in the assessment order for violation of provisions of section 269T which would lead to initiation of penalty proceedings u/s 271E of the Act and there being no reference for initation of penalty to the prescribed authority make the penalty proceedings and the impugned order bad in law and such an order is liable to be quashed.

3. In any case, the learned CIT(A) has erred in confirming the levy of penalty of Rs. 5,75,000/- of the Act u/s 271E of the Act on the ground that the appellant has violated the provisions of section 269T of the Act by repaying loan beyond the prescribed limit. On proper appreciation of facts and law applicable, the penalty as levied and confirmed being erroneous is to be deleted.

4. The authorities below have erred in not appreciating that

(a) the genuineness of the transactions were not doubted
(b) there was a reasonable cause for repaying money in cash
(c) there was no conscious disregard / contravention of the statutory obligation or defiance of law;
and have erred in levying/confirming the penalty u/s 271E of the Act.

On facts and circumstances of the case and the law applicable, the penalty as levied /confirmed is to be deleted.

5. In view of the above and other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast or in the alternative, the penalty as levied/confirmed be deleted."

2. Brief facts of the case are as under:

2.1 The assessee is an individual and filed his/her return of income for year under consideration on 23.02.2018. The Ld.AO had information that assessee received loan of Rs.5,75,000/- in cash and accordingly penalty u/s. 271D was initiated by issuing notice dated 24.01.2022. It is also submitted that the scrutiny assessment u/s. 143(3) was completed in the hands of the assessee without any addition by an order dated 05.02.2019. Neither there was any mention of initiation of penalty proceedings nor there was any levy.

2.2 During the penalty proceedings, the assessee submitted that it had received the money from one Shakunthala, Kanthalakshmi and Shilpa, credit worthiness and genuineness was established during the assessment proceedings.

2.3 It is submitted that the assessee filed following details in respect of the amount received from the persons as under:

c) The details of amounts taken and repaid by the appellant is as follows :

Rs. 2,00,000/- taken and repaid from / to Smt. Shakunthala (Mother).

i) The appellant's mother is a housewife aged around 77 years and was not an income tax assessee and also did not have any bank account. The appellant's mother was keeping her earlier / past savings with her for the medical and other expenses and which were given to appellant (being her son) for safe custody for temporary period during the year.

ii) The details of amounts accepted by the appellant in cash is as under :

Sl no	Date	Amount accepted by the appellant
1	06.09.2016	40,000/-
2	09.05.2016	40,000/-
3	10.05.2016	50,000/-
4	16.05.2016	45,000/-
5	18.05.2016	25,000/-
	Total	**2,00,000/-**

iii) Thereafter, the amounts taken were repaid by the appellant during the year itself. Details of loan repayment by the appellant is as under :

Sl no	Date	Amount repaid by the appellant
1	20.01.2017	50,000 -
2	24.01.2017	60,000 -
3	29.01.2017	50,000 -
4	01.02.2017	40,000 -
	Total	**2,00,000/-**

iv) Copy of confirmation letter along with copy of aadhaar card for amounts taken from and repaid to the above stated person has been submitted during the course of the assessment proceedings / penalty proceedings.

Rs. 1,75,000/- taken and repaid from / to Smt. Kanthalakshmi (Mother in Law).

i) The appellant's mother-in-law is a housewife aged around 71 years and was not an income tax assessee and also did not have any bank account. The appellant's mother-in-law was keeping her earlier / past savings for her medical and other expenses and which were given to appellant (being her son-in-law) for safe custody for temporary period during the year.

ii) The details of amounts accepted by the appellant in cash is as under:

Sl no	Date	Amount accepted by the appellant
1	08.09.2016	65,000/-
2	12.09.2016	60,000/-
3	14.09.2016	50,000/-
	Total	**1,75,000/-**

iii) Thereafter, the amounts taken was repaid by the appellant during the year itself. Details of repayment by the appellant is as under :

Sl no	Date	Amount repaid by the appellant
1	17.02.2017	35,000/-
2	19.02.2017	25,000/-
3	24.02.2017	40,000/-
4	27.02.2017	40,000/-
5	28.02.2017	35,000/-
	Total	**1,75,000/-**

iv) Confirmation letter along with copy of aadhaar card for amount taken from and repaid to the above stated person has been submitted during the course of the assessment proceedings / penalty proceedings.

Rs. 2,00,000/- taken and repaid from / to Smt. Shilpa W/o Narasimha Murthy (Friend's Wife).

i) The appellant's friend's wife aged about 31 years and was working in Xerox shop as computer operator from past several years where she derived salary income. The income was below the taxable limit and her accumulated savings was given to the appellant for safe custody for temporary period during the year.

ii) The details of amounts accepted by the appellant in cash is as follows :

Sl no	Date	Amount accepted by the appellant
1	05.06.2016	40,000/-
2	09.06.2016	55,000 -
3	13.06.2016	45,000 -
4	21.06.2016	40,000 -
5	24.06.2016	20,000/-
	Total	**2,00,000/-**

iii) Thereafter, the amounts taken were repaid by the appellant during the year itself. Details of loan repayment by the appellant is as under :

Sl no	Date	Amount repaid by the appellant
1	02.03.2017	40,000/-
2	03.03.2017	60,000/-
3	07.03.2017	50,000/-
4	10.03.2017	50,000/-
	Total	**2,00,000/-**

The Ld.AO after considering the submissions, levied penalty in the hands of the assessee u/s. 271D amounting to Rs. 5,75,000/-.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.4 The Ld.CIT(A) dismissed the appeal filed by the assessee by observing as under:

> *"7. DECISION: I have gone through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant didn't furnish satisfactory documentary evidence to explain its state of affairs during the penalty proceedings of A.Y. 2017-18.*
>
> *7.1. During the appellate proceedings. the appellant has not complied properly to the notices issued nor filed any written submission. In absence of the written submission and evidence. it remained to be unexplained as to how the*

AO's order is erroneous. If the appellant claims that the penalty order was objectionable it should have provided supporting arguments of evidences. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However. the appellant failed to avail the same by non-complying. I am of the view that the government cannot waste its own resources in time and money by providing endless opportunities to pursue taxpayers their own appeals. especially when numbers of pending appeals are high. The more opportunities to a particular taxpayer are always at the cost of denying opportunity to other taxpayer of getting his/her appeal heard early. Therefore. it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

7.2. In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

> *"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.*
>
> *5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 lTR 5771. has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."*

7.3. It is seen from the penalty order dated:27.07.2022, that the appellant has received a loan of Rs. 5,75,000/- in

cash from various persons which is in violation of the provisions of section 269SS of the Act. During the penalty proceedings, appellant has not furnished any satisfactory explanation before the AO. During the appellate proceedings, the appellant has not complied to the notices issued nor filed any written submission. However, in the interest of justice, the appellants submission in the statement of facts is considered and not found to be acceptable. The appellants main contention is that the transactions were done in cash due to lesser banking facilities in his town. However, it is seen from his own submission that this is a misleading statement because the town in question is fairly covered by banking facility. Taking recourse to general and unsubstantiated claims with regard to non-adequacy of banking facilities, is nothing but diversionary and it is clear that there is violation of section 269SS of the Act and the appellant has no justifiable explanation for the same. Accordingly, I agree with the reasoning of the AO and confirm his action of levying penalty of Rs. 5,75,000/- u/s 271D of the Act for the violation of section 269SS of the Act. The substantial grounds of appeal are hereby dismissed."

2.5 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal.*

3.1 The Ld.AR submitted that there is no dispute whatsoever about the source of money. The transactions was among family members for genuine business exigency, and was purely temporary in nature. She submitted that, the money was advanced without carrying any interest or repayment tenor. She thus submitted that the advances received are not akin to transactions between a borrower and a lender, and therefore the transactions are not in the nature of loans. The Ld.AR submitted that genuineness of the transaction was not doubted by the Ld.AO, and the transactions was between family members and assessee. She also submitted that all the family members being ladies normally keep cash in the house because of house works

and that all are income tax assessees, maintaining books of accounts. She also submitted that the transactions was reflecting in the accounts of all the three persons who advanced money to the assessee and details of their PAN Number and address etc. were available and furnished during scrutiny proceedings. It is also submitted that all the family members gave Letters of confirmation of transactions and balances that was submitted during the scrutiny. The Ld.AR submitted that, the cash transactions between the family members was out of cash available as per their respective books of accounts, from time to time.

3.2 The Ld.AR thus submitted that although the transaction in cash was against the provisions of section 269SS, it was not against the intent of law, due to the exigency that existed, wherein assessee required the cash to be accepted. She thus prayed for the penalty to be deleted as the reasonable cause as per u/s. 273B is made out and also established by the assessee beyond any doubt for accepting the loan in cash.

3.3 On the contrary, the Ld.DR submitted that, there is contravention of the provisions of section 269SS, due to which the penalty is attracted. He thus vehemently relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. The only issue that is raised in the present appeal is in respect of penalty levied for accepting money from family members in cash, details of which has been reproduced hereinabove.

4.1 Further, we also find force in the argument of the Ld.AR that in the assessment order, there is no initiation of penalty u/s. 271D by the Ld.AO.
It is a prerequisite condition that the initiation of penalty u/s. 271D /271E of the act must arise out of the assessment proceedings which is not satisfied in the present facts of the case.

4.2 Admittedly, it was a temporary advance that was taken by the assessee repaid during the year under consideration itself. The genuineness of the borrowings in the present facts is not in doubt by the authorities and the assessing officer is very well satisfied with the assessee's explanation regarding the identity and credit worthiness of the family members who advanced money to assessee in cash.

4.3 It is also pertinent to note that, the advances were taken by the assessee from his mother, mother-in-law and friend's wife to be genuine and bonafide, cannot partake the character of loan or deposit, as there was no interest payable by the assessee to the family members admittedly. Further, it is not the case of the revenue that, the money received by the assessee from the family members in cash is not used by the assessee for the business exigency and that assessee. The persons from whom assessee took money in cash are admittedly assessed to income tax and

are maintaining books of accounts and the transactions are reflected in the accounts of all the parties.

4.4 We note that the existence of reasonable cause as contented by the assessee are well founded. In the present facts of the case, the assessee established by way of evidences that there is reasonable cause in taking money in cash and it did not amount to unaccounted monies, either in the hands of the assessee or the family members, from whom the monies were taken. To our mind, these requirements are sufficient to hold that penalty u/s. 271D is not justified. We therefore direct the Ld.AO to delete the penalty u/s. 271D of the act.

Accordingly, we do not find any merit in the present penalty u/s. 271D having levied in the hands of the assessee.

As a consequence, penalty u/s. 271E also stands deleted.

Accordingly, all the grounds raised by assessee in both the appeals stands allowed.

In the result, both the appeals field by the assessee stands allowed.

Order pronounced in the open court on 08th August, 2024.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 08th August, 2024.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore