

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य के समक्ष।
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं / ITA Nos. 952 & 953/Ahd/2023
निर्धारण वर्ष / Assessment Year: 2013-14

Atul N. Shah, 45, Mahalaya Bungalows, Nr. High Court, Sola, Ahmedabad-380060 PAN : AJQPS 4627 Q	बनाम	JCIT, Range 4(2), Ahmedabad
Vs.		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
निर्धारिती की ओर से / Assessee by :	Shri Dhrunal Bhatt, AR	
प्रत्यर्थी की ओर से / Revenue by:	Shri Atul Pandey, Sr DR	

सुनवाई की तारीख / **Date of Hearing** : 29/07/2024
घोषणा की तारीख / **Date of Pronouncement**: 23/08/2024

आदेश / O R D E R

These two appeals have been filed by the assessee against separate order passed by the learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [in short referred to as "Id. CIT(A)"] under section 250 of the Income Tax Act, 1961 [in short referred to as "the Act"], both dated 27.09.2023, confirming the levy of penalty of Rs.8,25,000/- each under Section 271D and 271E of the Act for Assessment Year (AY) 2013-14.

2. The Id. Counsel for the assessee, at the outset, submitted that the background leading to the levy of the impugned penalties was identical. Therefore, both the appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The Id. Counsel for the assessee pointed out that the impugned penalties levied u/s 271D & 271E of the Act were on account of the assessee having been found to be violated the provisions of Section 269SS and 269T of

the Act which debarred acceptance and repayment of loan respectively in cash beyond a certain limit. In the present case, the charge of the Revenue was that the assessee had taken loans of Rs.8,25,000/- in cash and repaid the same otherwise than by account payee cheque as required by Statute, i.e. the repayment was found to have been made by bearer cheques in violation of the provision of law, and therefore, the penalty levied on the assessee of the equivalent amount of cash loan taken and repaid amounting to Rs.8,25,000/- each u/s 271D and 271E of the Act.

4. The same was confirmed by the Id. CIT(A) and hence the present appeal before us raising the following grounds in the respective appeal as under:-

Grounds raised in ITA No. 952/Ahd/2023

"1. In law and in the facts and circumstances of the case, the CIT(A) has grievously erred in upholding the penalty levied by Ld. Jt. CIT, Range-4(2), Ahmedabad of Rs. 8,25,000/- u/s 271E of the Act for alleged violation of provisions of Section 269T of the Act, in the penalty order dated 29.03.2018 made by him for A.Y. 2013-14.

2. In law and in the facts and circumstances of the case, the CIT(A) has also failed to appreciate the fact that no transactions in cash referred to in the penalty order were effected and thus no penalty is leviable"

Grounds raised in ITA Nos. 953/Ahd/2023

"1. In law and in the facts and circumstances of the case, the CIT(A) has grievously erred in upholding the penalty levied by Ld. Jt. CIT, Range-4(2), Ahmedabad of Rs. 8,25,000/- u/s 271D of the Act for alleged violation of provisions of Section 269SS of the Act, in the penalty order dated 29.03.2018 made by him for A.Y. 2013-14.

2. In law and in the facts and circumstances of the case, the CIT(A) has also failed to appreciate the fact that no transactions in cash referred to in the penalty order were effected and thus no penalty is leviable"

5. Drawing our attention to the facts of the case, the Id. Counsel for the assessee drew our attention to the order passed by the Assessing Officer levying penalty u/s 271E of the Act narrating the same as under:-

"In this case, the information was received by the ITO(Inv.), Unit-II, Ahmedabad from the Police Inspector, Navrangpura Police Station Ahmedabad that a search action was carried out on Sudama Resorts on 30/06/2012 and consequently seized the assets which included cash amounting to Rs. 17,17,091/- and cheque/Demand Draft of Rs. 36,75,000/-. Regarding source of cash and cheques/Demand Draft, statement of Shri Kaushik J. Shah, Director of Sudama Resorts was recorded u/s. 131(1A) of the I.T. Act on 07/05/2013. In the said statement, it is stated that he is arranging finance for the members of Sudama Resorts Pvt. Ltd. in his individual capacity. The cheques were obtained from financier. However, he has not been able to give the name of financier. The above cash and cheques were requisitioned u/s. 132A on 27/01/2015.

2. Subsequently, the banks whose cheques were found and seized were approached and requested to provide KYC details etc. The same were received from the respective banks. On perusal of the details received from the banks, it is found that the assessee-Shri Atul Navinchandra Shah has issued following cheques, the details of which are as under:

Sr. No	Name of person Name signing cheque	Name of Bank	Account No.	Amount of Cheque	Date of cheque
1.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/06/2012
2.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/07/2012
3.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/08/2012
4.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/05/2012
5.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/09/2012
6.	Atul Navinchandra Shah	State Bank of India	10160898437	75,000/-	15/10/2012
7.	Atul Navinchandra Shah	HDFC	491000002155	75,000/-	15/12/2012
8.	Atul Navinchandra Shah	HDFC	491000002155	75,000/-	15/01/2013
9.	Atul Navinchandra Shah	HDFC	491000002155	75,000/-	15/11/2012
10.	Atul Navinchandra Shah	HDFC	491000002155	75,000/-	15/02/2013
11.	Atul Navinchandra Shah	HDFC	491000002155	75,000/-	15/03/2013

3. It is pertinent to mention here that Shri Kaushik J. Shah, Director of M/s. Sudama Resorts Pvt. Ltd. has already accepted that these cheques found and seized by the Police Authorities during their search operation were actually financed in cash by the financiers and he was not in the position to give the names of financiers. Hence, he owned-up the same as his income for FY. 2012-13 during the course of recording his statement on 07/05/2013. A Summons

u/s. 131(1A) of the I.T. Act was also issued to the assessee Shri Atul Navinchandra Shah on 26/02/2015 by the LT.O.(Inv), Unit-II, Ahmedabad to remain present on 02/03/2015 with details mentioned in the Summons. In response thereof the assessee has sought adjournment for two weeks. However, no details were furnished after lapse of two weeks. It proves that the assessee has nothing to say in the matter and having no explanation regarding cash of Rs. 8.25 lacs for which he has given 11 numbers of cheque of Rs. 75,000/- each dated 15th of each month starting from May 2012 to March 2013. Thus it proves that the assessee has received cash loans of Rs. 8.25 lacs during F.Y. 2012-13 relevant to the A.Y. 2013-14 which are in violation of provision of section 269SS of the I.T. Act. Further, from the above facts it is clear that the assessee has given 11 bearer cheques for repayments of cash loans of Rs. 8,25,000/-, which is in violation of provisions of section 269T of the LT. Act, 1961, which is liable to penalty u/s.271E of the I.T. Act, 1961 in respect of default committed u/s.271E of the I.T. Act, 1961."

6. Referring to the above, the Id. Counsel for the assessee pointed out that in the search operation carried out by the police at Sudama Resorts, cash of Rs.17,17,091/- and cheque/Demand Draft of Rs.36,75,000/- were found. This information was received by the ITO (Investigation), Unit-II, Ahmedabad and the cash/cheques were requisitioned u/s 132A of the Act on 27.01.2015. Statement of the Director of Sudama Resorts Pvt. Ltd. was recorded u/s 131(1A) of the Act, i.e. of Mr. Kaushik J. Shah, who confessed to arranging finance for the members of the resort. He admitted the cheques being obtained from financiers; however, he was unable to give the name of financiers; and, therefore, he owned up all the cash and cheques as his income for the impugned assessment year. The Assessing Officer found that the cheques found and requisitioned during search amounting to Rs.8,25,000/- were bearer cheques and related to the assessee. Based on the statement recorded of the Director of Sudama Resorts, the Assessing Officer held that the assessee had received cash of Rs.8,25,000/- and repaid the same by way of bearer cheques which were found at Sudama Resorts. Accordingly, he levied penalty u/s 271D of the Act for loan taken in cash and u/s 271E of the

Act for the repayment of the same otherwise than by account payee cheque equivalent to the amount of loan taken and repaid amounting to Rs.8,25,000/- each.

7. The contention of the Id. Counsel for the assessee before us was that it was evident from the above facts that the allegation of the department of the assessee having taken cash loans and repaid the same in violation of provisions of Section 269SS and 269T of the Act was based merely on surmises and conjectures and there was no concrete evidence substantiating the said fact with the Department. He contended that the entire case of the Revenue rests on the statement of Mr. Kaushik J. Shah; and despite the assessee demanding cross-examination, the same was not afforded to the assessee. He further pointed out that out of 11 bearer cheques found at Sudama Resorts relating to the assessee of Rs.75,000/- each ,some were still not deposited on the date when the search was conducted. He also pointed out that the Director of the Sudama Resorts had in fact owned up all income on account of the cash and cheque found and the same had been taxed in his hands also by the Department. That, therefore, with no concrete findings of the assessee having accepted or repaid loans of Rs.8.25 lakhs in violation of the provisions of Section 269SS and 269T of the Act, there was no case for levying any penalty on the assessee. Submission in writing were filed before us as under:-

“Atul N Shah in ITA No. 952 & 953/Ahd/2023 pertaining to AY 2013-14 before SMC

Facts:

Police in it's search operations found cash of Rs. 17.17 lacs & cheques/demand draft of Rs. 36.75 lacs at Sudama Resorts. This information was received by ITO(Invo) Unit-II Ahmedabad. The cash & cheques were requisitioned u/s 132A on 27/01/2015.

6

Statement of Mr Kaushik J Shah, Director of Sudama Resorts Pvt Ltd, was recorded u/s 131(1A) where he confessed to arranging finance for the members of Sudama Resorts Pvt Ltd. He admitted to cheques being obtained from the Financiers. He however was unable to give the names of the Financiers. He (Mr. Kaushik Shah) owned up the same as HIS income for FY 2012-13 relevant to AY 2013-14.

The Assessee's (Mr Atul N Shah) reply dated 13-12-2017 (on Pg 3-4 of Penalty order) was not accepted and ultimately JCIT levied penalty u/s 271D for having accepted loan in Cash being violation of section 269SS. Penalty of Rs. 8.75 Lacs was levied.

Penalty u/s 271D levied

The penalty is based solely on presumption that cash loan was received against the security of cheques & this is based on the statement of Mr Kaushik J Shah & the fact that signed cheques were found during search.

Assessee's Contentions:

There is no specific reference to question and the response of the Mr Kaushik Shah based on which the JCIT has come to above conclusion - more particularly when TWO cheques of Rs. 75K each dated 15-5-2012 & 15-6-2012 were not deposited even when the search was conducted on 30-06-2012. Assessee's demand a cross examination NOT granted. (Pg 4 of penalty order)

The reasoning that the Assessee, Mr Atul Shah, wanted to buy a car against which the cheques were given & SUCH transaction (of buying a car against which loan was intended to be taken) didn't materialise was not accepted by the JCIT even in light of the fact that two cheques dated 15-5-2012 & 15 06 2012 were not deposited as aforesaid. Further, the Mr Kaushik who owned up the transaction and offered the income has not been considered and penalty is levied merely on surmises & presumptions. (Refer Pg 4 of penalty order where the response is re-produced - common submission for 271D & 2716)

CIT(A) finding - reliance placed on various decisions are on different facts where the factum of accepting loan in cash was established.

Assessee's Plea

In the instant case - its only a presumption based on undeposited cheques found & statement of Mr Kaushik Shah where Mr Atul Shah (Assessee) has NOT been mentioned anywhere. Nothing is brought on record to establish that Cash loan was received / Loan repaid in cash. Thus penalty is based on conjectures, surmises & suspicion.

Decisions relied upon:

1) *Navin Kumar v. JCIT, Bhatinda in ITAT Amritsar in 98 ITD 242*

Relevant headnotes reproduced for reference:

The factual finding recorded by the Commissioner (Appeals) was fully supported by the material on record. Except photocopies of alleged statement of loan account of the assessee which was contradicted by admission of 'H' and was shown to be incomplete, there was no material to infer that loan/deposit in contravention of the provisions of section 26955 was returned by the assessee. Therefore, it was not possible to accept that 'f' did not make admissions in his statement attributed to him by the Commissioner (Appeals) The said fact was not challenged even by the revenue, it was further not clear as to how fact of entering Rs. 10,000 when actually Rs. 8,500 were given H, would be reflected in the copy of account produced by the revenue it was difficult to subscribe to the view proposed by the Judicial Member, it is a settled law that penalty proceedings are quasi-criminal proceedings. The revenue authorities are obliged to record a clear finding based on authentic evidence which would leave no scope for doubt that the assessee committed offence and was liable to be visited with penalty. The penalty cannot be imposed on vague and imaginary evidence. No such definite evidence was available in the instant case to show that the assessee contravened provisions of section 26955 to justify levy of penalty under section 271D. The Commissioner (Appeals), on the basis of statement of the assessee, assumed that he must have received loan or deposit of Rs. 30,000 and, therefore, imposed penalty of a equal amount which inference was not supported by any cogent material. The Accountant Member had properly analyzed statement of the assessee. There were large number of credit and debit entries in unreliable photocopies of accounts relied upon by the revenue authorities. Entry or entries taken singly or jointly did not establish that the assessee received loan/deposit of Rs. 30,000 in contravention of statutory provision. The penalty had been imposed on estimate and guess work and Rs. 30,000 had been taken in an ad hoc manner. There was no justification to hold that statutory provisions had been violated in terms of section 271D. Legal effect of the order proposed by the Judicial Member was that relief allowed by the Commissioner (Appeals) was withdrawn although no request to do so was made by the revenue. The impugned order had been accepted by them. There was also force in the alternative finding of the Accountant Member that assessee were petty traders carrying on small business, that their income was below taxable limit and for purposes of business, they were taking small loans without any intention to violate any statutory provision. They had no intention to

contravene the provision of section 26955 and, therefore, it would not be a fit case to levy penalty on them. [Para 28]

2) *Sneh Builders in ITAT 520/PN/2008 & 456/PN/2008*

Relevant extract reproduced for reference:

"7. After going through rival submissions and material on record we find that certain cheques were claimed to have been issued as security for the entire Sneh group to the statement of Shri Mahendra Yeole recorded u/s 131 on 11-1-2003 it was confirmed by him that the cheques found and seized from the premises of Shri H.H. Shah were issued from different firms and money was borrowed for business purposes and that such cheques were taken back on renewal of the loan transactions. Some of those cheques were used for making payments while others were cancelled it was general statement with regards to transactions with Sneh group but it is not in particular with regards to assessee i.e. Sneh Builders. There is nothing on record to suggest that the copy of the statement by Shri B.H. Shah was given to assessee at any point of time. There is also nothing on record that assessee was offered any opportunity to cross examine said B.H. Shah with regard to amount in question. The action of the Assessing Officer in imposing the penalty u/s 271D on the presumption that against the security of these cheques of Rs.95,50,000/- the assessee must have taken equivalent amount of cash is not borne from the records. There is no concrete evidence to fact that such amount was in fact received in cash by the assessee except the statement of Shri B.H. Shah. General statement of third person cannot be valid basis for taking action against the assessee. As the penalty has been imposed only on the basis that against the security of cheques equivalent amount of cash might have been taken cash loans is not justified. Under the facts and circumstances penalty of Rs. 95.50,000/- was rightly deleted by the CIT(A). We uphold the same"

3) *SC in Umacharan Shaw & Bros (371 ITR 271) held that conclusion as a result of suspicion could not take the place of proof. This principle would apply even in case of penalty proceedings though the decision was rendered in connection with grant of registration to the firm.*

With Regards to levy of penalty u/s 271E for violation of section 269T on similar facts

It has not been conclusively proved that the Assessee has taken Loan in cash-how can there be an allegation of loan being repaid in cash based on "Bearer Cheques found during Search" No evidence as to loan has been repaid in cash."

Reliance was placed on various judicial decisions in support, cited in the submissions of the assessee reproduced above.

8. The Id.DR, however, relied on the orders of the authorities below pointing out that during penalty proceedings and even in appellate proceedings, the assessee, it was noted by the Revenue Authorities, had not furnished any explanation for the cheques found pertaining to him at Sudama Resorts of Rs.8.25 lakhs, and in the light of the statement recorded of the director of the Sudama Resorts.

9. We have heard the contentions of both the parties. As transpires from the facts noted in the penalty orders, passed u/s 271D and 271E of the Act, it is clearly evident that there is no concrete finding of the assessee having accepted loans in violation of the provisions of Section 269SS of the Act or repaid the same in violation of the provisions of Section 269T of the Act. The only finding of the Revenue is to the effect that 11 cheques of Rs.75,000/- each pertaining to the assessee were found at Sudama Resorts whose Director had contended that the cheques were obtained from financiers for arranging loans in cash to them. Except for the statement of the Director of the Sudama Resorts, there is no other evidence with the Revenue. The assessee in fact had sought cross-examination of the Director of the Sudama Resorts and the same was not given by the Assessing Officer. Therefore, this statement of Director of Sudama Resorts has no evidentiary value in the eyes of law as laid down by the Hon'ble Apex Court in the case of Andaman Timber Industries Vs. CCE in Civil Appeal No. 4228 of 2006 dated 02.09.2015. Moreover it is a fact on record that the director of Sudama Resorts had surrendered income on account of cheques found during search at its premises.

10

There is , I agree with the Ld.Counsel for the assessee , no concrete finding of the Revenue ,based on authentic evidence, of the assessee having accepted and repaid loan in violation of the provisions of section 269SS/T of the Act. The finding of the Revenue to this effect is merely based on surmises and conjectures.

In the light of the above, with no clear finding based on authentic evidence of the assessee having violated the provisions of Section 269SS and 269T of the Act, we agree with the ld. Counsel for the assessee that there was no case for levy of penalty u/s 269D and 269E of the Act respectively.

10. Reliance placed by the ld. Counsel for the assessee on the decision of the ITAT, Amritsar Bench in the case of Navin Kumar Vs. JCIT, Bhatinda, reported in 98 ITD 242, is apt wherein the Hon'ble ITAT has noted that the penalty proceedings are quasi-criminal proceedings and the Revenue Authorities are under obligation to record a clear finding which would leave no scope for doubt and which is based on authentic evidence, that the assessee has committed the offence which was liable to be visited with penalty. That penalty cannot be imposed on vague and imaginary evidence.

11. Reliance placed by the ld. Counsel for the assessee in the case of Sneh Builders in ITA Nos. 520/PN/2008 and 456/PN/2008 squarely applies to the case of the assessee wherein identical penalty levied u/s 271D of the Act on the presumption that the assessee must have taken loan in violation of provisions of Section 269SS of the Act was deleted noting no concrete evidence brought on record to establish the fact of the assessee having violated the relevant provisions.

11

In view of the above, we direct the Assessing Officer to delete both the penalties levied u/s 271D and 271E of the Act.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 23/08/2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
(अन्नपूर्णा गुप्ता, लेखा सदस्य)

Ahmedabad, dated 23/08/2024

btik*/vk

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation- 30.07.2024
2. Date on which the typed draft is placed before the Dictating Member ...31.07.2024.
3. Date on which the approved draft comes to the Sr.P.S./P.S. -
4. Date on which the fair order is placed before the Dictating Member for Pronouncement
5. Date on which the file goes to the Bench Clerk23/08/2024
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
8. Date of Despatch of the Order.....