

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरुआरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.212/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

Muntaj Begum Mohammed 15-49, Hanuman Nagar Western Locks, Eluru – 534001 Andhra Pradesh [PAN: ANHPM9076A]	v.	Addl. CIT Rajamahendravaram Range Aayakar Bhawan Veerabhadrapuram Rajahmundry – 533105 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr.Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	01.10.2024
घोषणा की तारीख /Date of Pronouncement	:	17.10.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No.

ITBA/NFAC/S/250/2024-25/1064115468(1) dated 16.04.2024 for the A.Y.2013-14 arising out of order passed under section 271E of the Income Tax Act, 1961 (in short 'Act') dated 15.03.2022.

2. Brief facts of the case are that, Assessing Officer passed penalty order under section 271E of the Act dated 15.03.2022 pursuant to information received vide letter No. F.No. DIT(I&CI)/Intimation /269T/2019-20 dated 18.03.2020 of the Director of Income Tax (Intelligence &Criminal Investigation), Mumbai that the assessee has paid an amount of Rs. 3,86,600/- towards repayment of loan to M/s. Mahindra & Mahindra Financial Services Pvt. Ltd., on 06.08.2012 in the form of cash, thus violating the provisions of section 269T of the Act. The assessee has submitted circumstances under which the loan was repaid by cash, but however, the Assessing Officer considered that assessee has violated provisions of section 269T of the Act and is a fit case to levy penalty under section 271E of the Act thereby levying penalty of Rs. 3,86,600/-.

3. Aggrieved by the order of the Assessing Officer, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee made similar submissions stating that an auction was conducted by M/s. Mahindra & Mahindra Financial Services Pvt. Ltd., arising out of default in repayment of car loan, whereas the successful bidder in the auction being the purchaser has directly deposited the

sale proceeds in cash against the car loan with M/s. Mahindra & Mahindra Financial Services Pvt. Ltd. The Ld. CIT(A) considering that no evidence has been filed before him to justify the auction conducted by M/s. Mahindra & Mahindra Financial Services Pvt., Ltd., in the absence of any documentary evidences, Ld. CIT(A) dismissed the appeal of the assessee.

4. Being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. That under the facts and circumstances of the case the order passed u/s 271E of the IT Act dt:15/03/2022 that was upheld by the Ld. CIT(A) NFAC vide order passed u/s 250 of the IT Act dt: 16/04/2024 is not in accordance with facts of the case and provisions of law.

2. The Ld. CIT(A) NFAC in a summary and casual manner confirmed the penalty under section 271E of the IT Act without proper consideration of the assessee's submissions. The amount in question pertains to a cash repayment of a loan to M/s. Mahindra and Mahindra, following the sale of a vehicle by the company itself, where the funds were adjusted to the assessee's loan account due to default.

3. The Ld. CIT(A) NFAC ought to have appreciated that repayment of loan was by way of appropriation of the sale proceeds at the instance of the financier and it was not a voluntary payment by the appellant.

4. The Ld. CIT(A) NFAC and the Assessing Officer (AO) failed to recognize that there was a reasonable cause which prompted the assessee to make repayment of the loan in cash. The lower authorities neglected to consider the levy of penalty from the perspective of section 273B of the IT Act.

5. For these and other reasons that are to be urged at the time of hearing the appellant prays that the penalty imposed is liable to be deleted.”

5. The only issue with respect to grounds raised by the assessee is regarding penalty levied by the Assessing Officer under section 271E of the Act amounting to Rs. 3,86,600/-. In this connection, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee due to non-repayment of the car loan to M/s. Mahindra & Mahindra Financial Services Pvt., Ltd., the car was auctioned on 04.02.2013. Ld.AR further submitted that successful bidder has deposited loan amount of Rs. 3,86,600/- under the settlement of the outstanding loan amount of the assessee. The main contention of the Assessing Officer is considering the repayment of the loan in cash is a violation of 271E of the Act whereas the Ld.AR pleaded that the cash was not deposited by the assessee but by the successful bidder in the auction. The Ld.AR also submitted that since the penalty was initiated after a period of nine (9) years it is barred by limitation. Therefore, he pleaded that the penalty levied by the Assessing Officer be deleted.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] relied on the orders of the revenue authorities.

7. We have heard both the sides and perused the material available on record and the orders of the lower authorities. It is an admitted fact that the assessee has failed in repayment of loan to M/s. Mahindra & Mahindra Financial Services Pvt. Ltd., and thereafter M/s. Mahindra & Mahindra

Financial Services Pvt., Ltd., auctioned the car during the impugned assessment year. It is also an undisputed fact that the successful bidder in the auction namely Shri Imtiaz Ali has admitted the cash payment of loan to M/s. Mahindra & Mahindra Financial Services Pvt., Ltd., directly into the bank account on 06.08.2012. Further, the “B-Register” of Andhra Pradesh Transport Department submitted by the Ld.AR also disclosed that Shri Imtiaz Ali becomes owner of the car from 10.04.2013. In these circumstances, since the cash payment was not by the assessee, but by the bidder directly to M/s. Mahindra & Mahindra Financial Services Pvt., we are of the considered view that assessee cannot be penalised for deposit of cash which was made by a successful bidder during the auction. We therefore direct the Assessing Officer to delete the penalty, thereby, allowing the grounds raised by the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 17th October, 2024.

Sd/-

(दुव्वूरु आरएल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 17.10.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : Muntaj Begum Mohammed
15-49, Hanuman Nagar
Western Locks, Eluru – 534001
Andhra Pradesh
2. राजस्व/ The Revenue : Addl. CIT
Rajamahendravaram Range
Aayakar Bhawan
Veerabhadrapuram
Rajahmundry – 533105
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam