

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.371/Nag./2024
(Assessment Year : 2019-20)

Pravin Nilkanth Barode
147, Nandkieshwar, At Post Akot
Akola 444 101 PAN – BDOPB1143B

..... Appellant

v/s

Income Tax Officer
Ward-1, Akola

..... Respondent

Assessee by : Shri Bhavesh Moryani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 09/12/2024

Date of Order – 20/12/2024

ORDER

PER K.M. ROY, A.M.

Aforesaid appeal by the assessee is against the impugned order dated 01/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2019-20.

2. The assessee has raised following grounds:-

"1. The learned CIT(A) NFAC has passed ex-parte penalty order u/s. 271D is illegal, invalid and bad in law;

2. On the facts and circumstances of the case the learned CIT(A) NFAC failed to consider penalty U/s. 271D is levied without any assessment proceedings, therefore ex-parte penalty order passed by CIT(A) NFAC is illegal, invalid and bad in law;

3. *On the facts and circumstances of the case the learned CIT(A) NFAC erred in confirming and imposing penalty U/s. 271D at Rs. 11,50,000/- the penalty imposed is unjustified, unwarranted and excessive;*

4. *On the facts and circumstances of the case the learned CIT(A) NFAC ought to have considered that the contention of the assessee that the purchaser was agriculturist and done first time in transaction with assessee and insisted on cash payment, therefore imposition of penalty U/s. 271D is unjustified, unwarranted and excessive;*

5. *On the facts and circumstances of the case the learned CIT(A) NFAC ought to have considered that assessee falls under exception as purchaser is new to the seller, therefore without giving opportunity to being heard and without reasonable cause imposed U/s. 271D is unjustified, unwarranted and excessive;*

7. *The appellant craves leave to amend, add or take a new ground or grounds at the time of hearing."*

3. During the course of hearing, at the very outset, the learned Counsel, Shri Bhavesh Moryani, appearing for the assessee, invited our attention to ground no.2, of the grounds of appeal and submitted that if the case is decided in his favour on the strength of this ground he need not delve into other grounds. It is pertinent to extract the impugned order in full to have a panoramic understanding of the issue.

"Order under section 271D of the Income Tax Act, 1961

The information shared by Pr.CIT-1, Nagpur which received from DIT(I&CI) to this office and after verification of information available, it was found that assessee has entered into a transaction of immovable property as Agricultural land situated at Kalwadi, Mauje Kalwadi, Akot, Dist. Akola with Sau Shalini Sanjay Shegokar, Akot for sale consideration of Rs 11,51,000/- document no.641/2019 and registered before the Sub-Registrar Class-1, Akot dt.14.02.2019. Assessee has accepted the amount of Rs 11,51,000/-in cash which is above Rs. 20,000/- and more otherwise than by account payee cheque(s) or bank draft(s) in contraventions of Provision u/s 269SS of the Income Tax Act, 1961. Accordingly show cause notice u/s 274 r.w.s 271D of the Income Tax Act, 1961 was issued on 21.01.2020 and served on the assessee.

In response to notice issued, the assessee himself attended on 29.01.2020 in office and stated that he has exchanged the Agricultural land, Mauje Kalwadi against the plot sold to Sau Shalini Sanjay Shegokar.

The assessee furnished the written submission and a sale/purchase deed dt. 13.02.2020. He also pleaded that actual cash is not accepted against the sale of property, it is only the exchange of property of Lay-out Plot No. 6,7,8, of total 147 sq.mtr. In Mauje Akot, Survey No. 629 Nazul No. 21.

On perusal of sale deed no. 644/2019 which was submitted by the assessee, it is seen that there is neither the name of assessee as purchaser nor the name of Sau Shalini Sanjay Shegokar as a seller in the sale/purchase deed doc no. 644/2019. The registered document provided by the assessee does not prove the exchange of property and it is clearly proved that there is not exchange of property registered document no. 641 against the property registered document No. 644. As the purchaser and seller of both immovable properties are not same. Hence the claim of exchange is not proved as stated by the assessee. Therefore the provisions of 269SS are clearly attracted.

For the sake of convenience and ready reference relevant provision of Sec. 269SS is reproduce as under:

269SS. No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,-

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid, or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more.

As mentioned above, the assessee has sold Agricultural land to SauShalini Sanjay Shegokar, Akot for sale consideration of Rs 11,51,000/- and received the amount in cash.

In view of the above facts, I am satisfied that the assessee has violated provision of Sec. 269SS of the Income Tax Act, 1961 by accepting cash otherwise than by account payee cheque or account payee bank draft aggregate amount of which is exceeding Rs. 20,000/- and hence liable for penalty u/s 271D of the Income Tax Act, 1961.

I therefore proceed to levy penalty equal to the aggregate amount of cash accepted otherwise than by an account payee cheque or account payee draft of Rs. 11,51,000/-.

Issued notice of Demand."

4. On a perusal of the order dated 18/03/2020, passed under section 271D of the Act, it is clear that there was no anterior assessment order. The legal riddle to solve whether the penalty under section 271D of the Act is leviable sans assessment. Similar issue came up before the Co-ordinate Bench of the Tribunal, Indore Bench, in Shri Umakant Sharma v/s JCIT, ITA no.364 to 366/Ind./2022, A.Y. 2008-09 and 21009-10, vide order dated 19/07/2023, wherein the Tribunal quashed the impugned order levying penalty under section 271D. The relevant findings of the Tribunal is reproduced below:-

"8. We have considered rival submissions and carefully perused the relevant material on record. There is no dispute that the assessee has not filed any return of income for the assessment year under consideration. The penalty u/s 271D of the Act has been levied on 23.01.2017 which is after 8 years from the end of the assessment year under consideration. The limitation for the penalty levied under chapter XXI has been provided in section 275 of the Act which reads as under:

"275. 1 Bar of limitation for imposing penalties

(1) 2] No order imposing a penalty under this Chapter shall be passed-

(a) 3 in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of 4 the Deputy Commissioner (Appeals) or] the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;

[Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Ap- peals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the "[Principal Chief Commissioner or] Chief Commissioner or "[Principal Commissioner or] Commissioner, whichever is later

(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.]

(IA) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "[Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264: Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed-

(a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;

(b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the "[Principal Chief Commissioner or] Chief Commissioner or the "[Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed; Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section]

2. The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989 .] 2 Explanation.- In computing the period of limitation for the purposes of this section,-

(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(ii) any period during which the immunity granted under section 245H remained in force; and

(iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.]]"

9. The limitation for passing the order imposing penalty under chapter- XXI has been provided by considering all possible situation where the assessment order or other order is subject matter of appeal of the order is revised under section 263 or assessment order or other orders are subject matter of appeal

before the Hon'ble High Court or Hon'ble Supreme Court. Thus, it is clear that section 275, pre supposes the existence of assessment proceedings/revision proceedings or appeal proceedings arising from the assessment order or revision order and the limitation is provided as per outcome of these proceedings. In absence of assessment in the case of the assessee the initiation of penalty is not valid and further when the satisfaction for initiation of the penalty on the part of the AO is absent in the case of the assessee then the penalty levied u/s 271D is not valid. The Hon'ble Supreme Court in case of CIT vs. Jain Laxmi Rice Mills (supra) has held as under:

"The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding Under Sec. 271E would also not survive. This, according to us, is the correct proposition of law stated by the High Court in the impugned order.

As pointed out above, insofar as, fresh assessment order is concerned there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, Insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied."

10. Thus, the Hon'ble Supreme Court has affirmed the view of the Hon'ble High Court that in absence of satisfaction recorded regarding the penalty proceedings u/s 271E of the Act the order of levy of penalty is not valid. The Ahmedabad Bench of the Tribunal in case of Vijayaben G. Zalavadia vs. JCIT (supra) has considered an identical issue as under:

"6. We have heard the respective parties and also perused the relevant materials available on record.

7. We find that on the identical set of facts the Punjab and Haryana High Court was pleased observe the following while upholding quashing of penalty by the Tribunal:

"3. We have heard learned counsel for the appellant.

4. The only point for consideration in this appeal is whether the assessee had contravened the provisions of Section 269T of the Act by making repayment of loan/deposits of Smt. Kusum Lata Thakral, through account payee cheque or account payee drafts to M/s. Babyloan Builders Pvt. Ltd., Gurgaon and, therefore, penalty under Section 271E was leviable.

5. The Assessing Officer had levied the penalty amounting to Rs. 11,02,6107- which has been deleted by the Tribunal. The Tribunal while deleting the penalty recorded that the return of the assessee was processed as on 31.12.2003 and the notice u/s. 274 read with section 271E of the Act was issued on 12.06.2007. Such notice was issued when there was no proceedings pending before the Assessing Officer. Relying upon Delhi High Court judgment in CIT v. Standard Brands Ltd. [20061 285 ITR 295/155 Taxman 383, the Tribunal further observed that action for penalty may be permissible only after regular assessment has been framed and since no regular assessment order had been passed in this case, the recourse to penalty proceedings under Section 271E were not justified. The findings recorded by the Tribunal read thus:-

"Having heard the parties and having perused the material on record, we find the grievance of the assessee to be correct. In this case, the return of the assessee was processed u/s. 143(l)(a) of the Income-tax Act, on 31.12.2003. Notice u/s. 274 read with 271E of the Act was issued to the assessee on 12.06,2007. It being a case of processing the return of income, there is no finding in the AO's order with regard to the applicability or otherwise of section 269T of the IT Act to the assessee's case. It was within the purview of the AO to bring the assessee's case to scrutiny and to make regular assessment u/s. 143(3) of the Act. It was also within the power of the AO at the appropriate stage to initiate proceedings u/s. 147 of the Act against the assessee. No such action was taken. Rather, the penalty was imposed on the basis of the finding in the case of assessee's wife."

6. No error or perversity could be shown in the aforesaid findings recorded by the Tribunal. Moreover, the assessee had taken a plea before the Assessing Officer that there was a reasonable cause for the assessee to have made direct payment of Rs. 14,02,600/- to M/s. Babyloan Builders Private Ltd., Gurgaon. It was pleaded that some of the repayments made by the assessee were inter company transfer for group housing and purchase of flat and at times payments were made after closure of banking hours. It was further submitted that the payments made were genuine and no tax evasion was involved and the default, if any, was of technical nature. The explanation being plausible one, it cannot be said that there was no reasonable cause within the meaning of Section 273B of the Act. No substantial question of law arises in this appeal.

8. We find substances in the submissions made by the Ld. A.R. particularly after considering the order passed by the Hon'ble Punjab and Haryana High Court as cited hereinabove. In fact, on the identical set of facts the penalty under Section 271E was deleted by the Tribunal and further upheld by the Hon'ble High Court.

9. Having regard to the facts and circumstances of the case and the ratio laid down in the order passed by the Punjab and Haryana High Court we do not hesitate to hold that the impugned penalty under Section 271E is not permissible in the absence of regular assessment framed against the assessee by the Revenue. Hence, the same is not found to be sustainable in the eye of law and, thus, quashed. The appeal preferred by the assessee is, therefore, allowed."

11. Therefore, it is pre-requisite condition that the initiation of penalty 271D/271E of the Act, there must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee. Accordingly in the facts and circumstances of the case and following the judgment of Hon'ble Supreme Court as well as Coordinate Bench of the Tribunal in case of Vijayaben G. Zalavadia vs. JCIT (supra), we hold that the penalty levied u/s 271D of the Act without any assessment proceedings in the case of the assessee is not valid and liable to be quashed. We order accordingly.

For A.Y. 2009-10 under section 271D & 271E

12. There are two penalty orders passed u/s 271D & 271E of the Act. The facts and circumstances for levy of the penalty u/s 271D of the Act are identical for A.Y. 2008-09 as the assessee has taken loan of Rs.4 lac in cash during this year and also repaid the said loan. Further there is no return of income on behalf of the assessee and there was no initiation of assessment proceedings on behalf of the AO and only initiation of the penalty proceedings u/s 271D & 271E of the Act without any assessment proceedings as well as recording of satisfaction are not valid. Accordingly in view of our findings on

this issue for A.Y.2008-09 the penalty levied u/s 271D as well as 271E of the Act for A.Y. 2009-10 is not valid and liable to be quashed.

13. In the result, appeal for A.Y.2008-09 u/s 271D & appeals for A.Y. 2009-10 u/s 271D & 271E are allowed."

5. The case is the opposite to the matter before us and the ratio decidendi is squarely applicable. Placing our respectful reliance to the decision of the Co-ordinate Bench as aforesaid as well as other celebrated jurisprudence, the imposition of penalty of ₹ 11,51,000, is directed to be deleted.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 20/12/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur