



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, ALLAHABAD**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.88 & 89/ALLD/2025
Assessment Year: 2017-18

Santosh Kumar Prop. Sheetal Prasad Santosh Kumar Banda Road, Atarra Banda (U.P)	v.	The Income Tax Officer Banda
TAN/PAN:ACTPK2394J		
(Appellant)		(Respondent)

Appellant by:	Shri Govind Krishna, C.A.
Respondent by:	Shri A. K. Singh, D.R.

ORDER

These appeals have been preferred by the Assessee against separate orders, both dated 12.02.2025, passed by the National Faceless Appeal Centre, Delhi (NFAC) for Assessment Year 2017-18.

2.0 The brief facts of the case are that during the course of assessment proceedings for the year under consideration, the assessee, vide reply dated 03.12.2019, submitted before the Assessing Officer (AO) that the assessee had received a loan totaling to Rs.8.00 lakhs (Rs.4.00 lakhs from Ms. Shikha Jaiswal and Rs.4.00 lakhs from Shri Shubham Jaiswal). As per the AO, the assessee had accepted the loan in violation of the provisions of section 268 of the Income Tax Act, 1961 (hereinafter called

“the Act’) and, therefore, he imposed a penalty of Rs.8.00 lakhs under the provisions of section 271D of the Act.

2.1 The assessee, vide reply dated 02.12.2019, also submitted before the AO that he had repaid a loan totaling to Rs.2,70,776/- (Rs.1,04,054/- to Ms. Sangeeta Jaiswal, Rs.66,122/- to Shri Saurabh Jaiswal and Rs.1,00,600/- to Shri Pradeep Kumar). As per the AO, the assessee had repaid the loan in violation of the provisions of section 269T of the Act and, therefore, he imposed a penalty of Rs.2,70,776/- under the provisions of section 271E of the Act.

2.2 Aggrieved, the Assessee preferred appeals before the NFAC, which dismissed both the appeals of the assessee ex-parte qua the assessee and confirmed the orders of the AO.

2.3 Now, the assessee has approached this Tribunal challenging the orders of the NFAC, by raising the following grounds of appeal:

GROUND RAISED IN ITA NO.88/ALLD/2025:

- 1. That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, without appreciating the complete facts in the case which could not be brought on record due to the serious illness of Counsel of the Appellant who ultimately expired 01.04.2023, causing no*

response by the Appellant, to the notices issued u/s 250 of the Act, however which can now be placed on record for consideration of your honour, as additional evidence pursuant to Rule 29, 30 and 31 of the Income Tax Appellate Tribunal Rules, hence the penalty order u/s 271E passed by the learned Jurisdictional Joint Commissioner of Income Tax being contrary to the facts, too harsh, against the principles of natural justice therefore such penalty levied is liable to be cancelled.

- 2. That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, without appreciating the complete facts that the aggregate loan repayment of Rs.2,70,776/- by the Appellant during the year have been made to 2 the close relatives being family members who are also Income Tax Assessee and therefore the Appellant had acted in bona fide belief for repayment of loans would not be eligible to penalty proceedings u/s 271E, relying on the various rulings given by the judicial authorities, therefore, such penalty levied is liable to be cancelled.*
- 3. That on the facts and in the circumstances of the case, the learned CIT (A) NFAC has erred in law and on facts by confirming the levy of penalty that are otherwise arbitrary, excessive, and not sustainable in law or on facts.*
- 4. That Appellant craves leave to modify any of the ground of appeal mentioned herein above and/or to add any fresh ground as and when it is required to do so subject to however approval of your honour.*

5. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271E has been passed by the learned Jurisdictional Joint 5 Commissioner of Income Tax in violation of provisions of section 274(2A) of Income Tax Act which has been notified vide notification no. 03/2021 dated 12.01.2021, being arbitrary, erroneous, and bad in the eyes of law and therefore such penalty is liable to be deleted.*
6. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271E has been passed by the learned Jurisdictional Joint Commissioner of Income Tax in violation of provisions of section 275(1)(c) of the Income Tax Act resulting a time barred order, hence such order levying penalty being arbitrary, erroneous and against the provisions of law and therefore such penalty is liable to be deleted.*
7. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271E has been passed by the learned Jurisdictional Joint Commissioner of Income Tax in violation of Rule (2) of Notification No. 03/2021 dated 12.01.2021, hence such order levying penalty being arbitrary, erroneous and against the provisions of law and therefore such penalty is liable to be deleted.*

GROUND RAISED IN ITA NO.89/ALLD/2025:

1. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271D has been passed by the learned Jurisdictional Joint Commissioner of Income Tax in violation of provisions of section 274(2A) of Income Tax Act which has been notified vide notification no. 03/2021 dated 12.01.2021, being arbitrary, erroneous, and bad in the eyes of law and therefore such penalty is liable to be deleted.*
2. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271D has been passed by the learned 2 Jurisdictional Joint Commissioner of Income Tax in violation of provisions of section 275(1)(c) of the Income Tax Act resulting a time barred order, hence such order levying penalty being arbitrary, erroneous and against the provisions of law and therefore such penalty is liable to be deleted.*
3. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271D has been passed by the learned Jurisdictional 3 Joint Commissioner of Income Tax in violation of Rule (2) of Notification No. 03/2021 dated 12.01.2021, hence such order levying penalty being arbitrary, erroneous and against the provisions of law and therefore such penalty is liable to be deleted.*

4. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, ignoring the fact that the penalty order u/s 271D has been passed by the learned Jurisdictional 4 Joint Commissioner of Income Tax for allegedly in violation of provisions of section 268 of Income Tax Act whereas provision of section 268 are not subjected to any penalty, hence the levy of penalty u/s 271D being bad in the eyes of law it is liable to be deleted.*
5. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, without appreciating the complete facts in the case which could not be brought on record due to the serious illness of Counsel of the Appellant who ultimately expired 01.04.2023, causing no response by the Appellant, to the notices issued u/s 250 of the Act, however 5 which can now be placed on record for consideration of your honour, as additional evidence pursuant to Rule 29, 30 and 31 of the Income Tax Appellate Tribunal Rules, hence the penalty order u/s 271D passed by the learned Jurisdictional Joint Commissioner of Income Tax being contrary to the facts, too harsh, against the principles of natural justice therefore such penalty levied is liable to be cancelled.*
6. *That on the facts and in the circumstances of the case, the learned CIT (A) NFAC. has erred in law and on facts by confirming the levy of penalty, without appreciating the complete facts that the aggregate loan of Rs.8,00,000/- raised by the Appellant during the year have been*

borrowed from his son and daughter in law who are also Income Tax Assessee and therefore the Appellant had acted in bona fide manner for raising the loan in accordance with the various rulings given by the judicial authorities that may not be treated as violation of provisions of Section 269SS of the Act therefore such penalty levied is liable to be cancelled.

- 7. That on the facts and in the circumstances of the case, the learned CIT (A) NFAC has erred in law and on facts by confirming the levy of penalty that are otherwise arbitrary, excessive, and not sustainable in law or on facts.*
- 8. That Appellant craves leave to modify any of the ground of appeal mentioned herein above and/or to add any fresh ground as and when it is required to do so subject to however approval of your honour.*

3.0 The Department had moved an application for adjournment, however, on a query from the Bench, the Ld. Sr. D.R. withdrew the adjournment application and gave his consent to argue the appeals.

4.0 The ld. Authorized Representative for the assessee submitted before me that the NFAC was not justified in dismissing the appeals of the assessee without adjudicating the grounds of appeals and in passing both the orders ex-parte qua the assessee. The ld. AR prayed that the assessee's appeals may

be restored to the Office of the NFAC for the purpose of adjudication on merits.

5.0 The ld. D.R. objected to the restoration of appeals to the NFAC.

6.0 I have heard both the parties and have also perused the material on record. Looking into the peculiar facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his cases and, therefore, I restore both these files to the Office of the NFAC with the direction to hear the appeals on merits. I also caution the Assessee to fully comply with the notices and directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC would be at complete liberty to pass the orders in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

7.0 In the result, both the appeals of the Assessee stand allowed for statistical purposes.

Order pronounced in the open Court on 21/11/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:21/11/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO