

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA Nos. 5668 & 5669/Mum/2013**  
(Assessment Year: 2000-01)

M/s. Vave Infotainment Network Ltd. Ajit Villa, Flat No. 2 Gr. Floor, Laburnum Road Gamadevi, Mumbai 007	Addl. C I T - 1(3) 5 <sup>th</sup> Floor, Aayakar Bhavan Vs. M.K. Road, Mumbai 020
PAN - AABCV4549D	

**Appellant**

**Respondent**

Appellant by: Shri Jayesh Dadia  
Respondent by: Shri Asghar Zain

Date of Hearing: 04.08.2016  
Date of Pronouncement: 10.08.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

These appeals by the assessee are directed against the separate orders of the CIT(A)-20, Mumbai dated 27.06.2013 confirming the levy of penalty of ₹1,45,000/- each under sections 271E and 271D of the Income Tax Act, 1961 (in short 'the Act') in A.Y. 2000-01.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, a company engaged in the business of providing television commercials, advertisements and programs, is incorporated on 31.02.2000. From the details on record it appears that the Assessing Officer (AO) initiated penalty proceedings under sections 271E and 271D of the Act for A.Y. 2000-01 by issue of show cause notice dated 31.10.2011 to the assessee calling for its explanation as to why penalty should not be levied thereunder for violation of the provisions of section 269SS and 269T of the Act for accepting and repaying loan of ₹1,45,000/- in cash from Shri Abhijit A Sheth, Director of the company. The submission by the assessee

that no such penalty can be levied as no such penalty proceedings had been initiated in the order of assessment and moreover that levy of the aforesaid penalty after more than a decade after the relevant assessment year is beyond any reasonable time was rejected by the AO as not satisfactory. According to the AO, there was no requirement for initiating of penalty proceedings in the order of assessment, which is since barred by limitation. The AO was of the view that the penalty proceedings initiated by him were not barred by limitation and in this regard placed reliance on the decision of the Special Bench of ITAT, Chandigarh in DCIT vs. Dewan Chand Amrit Lal and Others (283 ITR 203). The AO was of the view that the assessee was not able to justify that there was a reasonable/urgent exigency of business to receive and pay back the loan of ₹1,45,000/- in cash. In this view of the matter, the AO proceeded to levy penalty of ₹1,45,000/- under sections 271D & 271E of the Act, by way of two separate orders dated 25.03.2011 in A.Y. 2000-01.

2.2 On appeal, the learned CIT(A) agreed with the findings of the AO and upheld both the orders levying penalty of ₹1,45,000/- each under sections 271D and 271E of the Act in A.Y. 2000-01 by the impugned orders dated 27.06.2013.

3.1 Aggrieved by the separate orders of the CIT(A)-20, Mumbai dated 27.06.2013 upholding the levy of penalty of ₹1,45,000/- each under sections 271D & 271E of the Act in A.Y. 2000-01, the assessee has preferred these appeals in raising the following grounds and additional grounds: -

**3.2.1 ITA No. 5688/Mum/2013 - Penalty under section 271E - ₹1,50,000/-**

The grounds raised by the assessee are as under: -

1. *The learned Commissioner of Income Tax (Appeals) [Ld.CIT (A)] has erred in law as well as on facts of the case in confirming the action of the learned Addl. Commissioner of Income Tax Officer of levying penalty of Rs. 1,45,000/- u/s 271 E of the Income Tax Act, 1961. The action is unjustified and unwarranted.*
2. *The Ld. CIT (A) has erred in law and on facts of the case in confirming the action of the learned Addl. Commissioner of*

*Income Tax officer in invoking penalty proceedings for A.Y. 2000-01 after 9 years from date of passing the original order by the then Ld. Assessing Officer. Thus, the action is unjustified and unwarranted as penalty proceedings is initiated after reasonable time.*

3. *The Ld. CIT (A) has erred in concluding that the fact of receipt and repayment of cash loan of Rs. 1,45,000/- from Mr. Abhijit A.Sheth is undisputed whereas the fact is that your appellant is praying even at the stage of penalty proceedings before the Ld. Assessing officer that:*

- i) your appellant has not received any cash loans,*
- ii) when no loans is received, there is no question of repayment thereof,*
- iii) during the course of assessment proceedings u/s. 143(3) r.w.s. 263, loan confirmations were filed and accepted,*
- iv) there is no mention about any violation of section 269SS of the Income Tax Act, 1961 either in the original order u/s. 143(3) or order u/s. 143(3) r.w.s. 263 of the Income tax Act. 1961.*

4 *Your Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal.”*

3.2.2 The assessee has also raised additional grounds of appeal vide letter dated 12.01.2016 which is as under: -

*“(1) The Ld. CIT(A) has erred in law and on the facts of the case in confirming the action of Assessing Officer of levying penalty of Rs.1,45,000/- under section 271E of the Income Tax Act without appreciating the fact that the Assessing Officer has not recorded satisfaction of initiation of penalty proceedings under section 271E of the Act in the assessment orders.*

**3.3.1 ITA No. 4669/Mum/2013 - Penalty under section 271D - ₹1,45,000/-**

The grounds raised by the assessee are as under: -

- “1. The learned Commissioner of Income Tax (Appeals) [Ld.CIT (A)] has erred in law as well as on facts of the case in confirming the action of the learned Addl. Commissioner of Income Tax Officer of levying penalty of Rs. 1,45,000/- u/s 271D of the Income Tax Act, 1961. The action is unjustified and unwarranted.*
- 2. The Ld. CIT (A) has erred in law and on facts of the case in confirming the action of the learned Addl. Commissioner of Income Tax officer in invoking penalty proceedings for A.Y. 2000-01 after 9 years from date of passing the original order by the then Ld. Assessing Officer. Thus, the action is unjustified and*

*unwarranted as penalty proceedings is initiated after reasonable time.*

3. *The Ld. CIT (A) has erred in concluding that the fact of receipt and repayment of cash loan of Rs. 1,45,000/- from Mr. Abhijit A.Sheth is undisputed whereas the fact is that your appellant is praying even at the stage of penalty proceedings before the Ld. Assessing officer that:
  - i) *your appellant has not received any cash loans,*
  - ii) *during the course of assessment proceedings u/s. 143(3) r.w.s. 263, loan confirmations were filed and accepted,*
  - iv) *there is no mention about any violation of section 269SS of the Income Tax Act, 1961 either in the original order u/s. 143(3) or order u/s. 143(3) r.w.s. 263 of the Income tax Act. 1961.**
- 4 *Your Appellant craves leave to add, alter, amend and/or withdraw any of the above grounds of appeal.”*

3.3.2 The assessee has also raised additional ground of appeal which is as under: -

*“(1) The Ld. CIT(A) has erred in law and on the facts of the case in confirming the action of Assessing Officer of levying penalty of Rs.1,45,000/- under section 271D of the Income Tax Act without appreciating the fact that the Assessing Officer has not recorded satisfaction of initiation of penalty proceedings under section 271D of the Act in the assessment orders.*

3.3.3 After hearing both sides, we are of the opinion that, since the additional grounds raised go to the root of the matter in these appeals, in the interest of equity and justice, the additional grounds raised are to be admitted for consideration and adjudication and accordingly admit the same.

4.1.1 We have heard the learned A.R. for the assessee in support of the grounds/additional grounds raised and perused and carefully considered the material on record, including the details filed by the assessee and the judicial decisions cited.

4.1.2 Admittedly as per the averments, views and findings rendered by the authorities below, no satisfaction has been recorded by the AO for initiation of penalty proceedings in the orders of assessment, if any, passed for A.Y. 2000-01. According to the learned A.R. for the assessee, the

Hon'ble Apex Court in the case of CIT vs. Jai Laxmi Rice Mills reported in (2015) 379 ITR 521 (SC), dealing with the levy of penalty under section 271D of the Act, has held that if there is no satisfaction recorded in the order of assessment regarding initiation of penalty proceedings under section 271D of the Act, then no penalty thereunder could be levied. We have, respectfully perused a copy of the aforesaid judgement of the Hon'ble Apex Court (supra) and find that admittedly, by both AO in the penalty orders and learned CIT(A) in the impugned orders, no satisfaction for initiation of penalty proceedings under sections 271D and 271E of the Act has been recorded in the orders of assessment. In this factual matrix of the case and respectfully following the decision of the Hon'ble Apex Court in the case of Jai Laxmi Rice Mills (supra), we hold that since admittedly no satisfaction has been recorded for initiating penalty proceedings under sections 271D and 271E of the Act in the case on hand in the order of assessment for A.Y. 2000-01, therefore no penalty thereunder could be levied. In this view of the matter we cancel the penalty of ₹1,45,000/- each levied under sections 271D and 271E of the Act for A.Y. 2000-01. Consequently the assessee's additional grounds are allowed in both the appeals.

4.1.3 Since the additional grounds raised are allowed, we are of the view that there is no requirement for us to adjudicate on the other grounds raised by the assessee in these appeal.

5. In the result, both the assessee's appeals for A.Y. 2000-01 are allowed.

Order pronounced in the open court on 10<sup>th</sup> August, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 10<sup>th</sup> August, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -20, Mumbai*
4. *The CIT - 1, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Mumbai Benches, Mumbai*

n.p.