

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1006, 814, 1007, 1008 & 815/JP/2016
निर्धारण वर्ष/Assessment Year : 2004-05,2005-06, 2007-08, 2008-09 & 2010-11

Shri Rajendra Meena 855, Aakron Ka Rasta Kishanpole Bazar, Jaipur	बनाम Vs.	The JCIT Central Range Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFZPM 1966 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.K. Gogra, CA and
Shri S.S. Gogra, Advocate
राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT - DR

सुनवाई की तारीख / Date of Hearing : 12/01/2017
घोषणा की तारीख / Date of Pronouncement : 18/01/2017

आदेश / ORDER

PER BHAGCHAND, AM

These appeals have been filed by the assessee against two separate orders of the Id. CIT(A)- 4, Jaipur i.e. one dated 03-06-2016 for the assessment years 2004-05,2005-06, 2007-08, and 2008-09 respectively regarding imposition of penalty u/s 271D of the Act and other dated

3-06-2016 for the assessment year 2010-11 regarding imposition of penalty u/s 271E of the Act

2.1 During the course of hearing, ld. AR of the assessee prayed for condonation of delay in assessee's ITA No. 1006 to 1008/JP/2016 for the assessment years 2004-05, 2007-08 and 2008-09 as under:-

“1. That the ld. CIT(A) Jaipur dismissed the appeals for the assessment years 2004-05, 2005-06, 2007-08 and 2008-09 vide his order dated 3-06-2016. The appellant under the bona fide impression submitted single appeal before the Hon'ble ITAT against the order of the CIT which was passed by him as single order. The appellant in form no. 36 in column no. 3 & 3B mentioned the reference of appeal for both the years. Subsequently, it was realized by the appellant that the two appeals should have been filed before the Hon'ble ITAT in respect of above both the years. Vide application dated 11-11-2016 the appellant requested to the Hon'ble ITAT to treat the appeal filed on 12-09-2016 for the A.Y. 2005-06. Since the mistake committed by the noticed voluntarily, therefore, the separate appeal in respect of the assessment year 2004-05, 2007-08 and 2008-09 are being submitted. The delay of 63 days in filing of the appeal may please be condoned.

2. That the delay may please be condoned keeping in view of interest of justice and in favour of the poor applicant.

3. That the appeal fee of Rs. 500/- for A.Y. 2004-05 is deposited on 7-11-2016, A.Y. 2007-08 is deposited on 11-11-2016 & - A.Y.2008-09 is deposited on 7-11-2016 and copy of the challan are enclosed with memo of appeal.

4. That an affidavit in support of the condonation application is submitted herewith.

It is therefore, humbly prayed that the delay occurred due to bonafide and reasonable cause which may kindly be condoned for imparting justice to the assessee.’’

2.2 The Id. DR objected to the condonation applications of the assessee for late filing of the appeals.

2.3 I have heard the rival contentions and perused the materials available on record. Keeping in view of the facts and circumstances of the assessee, the condonation applications for late filing of the appeals of the assessee are allowed in view of the judgment of ‘‘Hon'ble Apex Court in the case of Collector, Land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 wherein the Hon'ble Court has observed as under:-

‘‘The Legislature has conferred power to condone delay by enacting section 5 of the Limitation Act, 1963, in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression " sufficient cause " in section 5 is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose of the existence of the institution of courts. A justifiably liberal approach has to be adopted on principle. ‘‘

Thus the assessee's applications for condonation of delay are allowed.

3.1 Apropos assessee's solitary ground for imposition of penalty u/s 271D of the Act in the appeals for the assessment years 2004-05, 2005-

06, 2007-08 and 2008-09, the facts as emerges from the order of the ld.

CIT(A) is as under:-

“4. I have considered assessee's submissions made for the AYs and also carefully gone through penalty orders passed u/s 271D of the Act for the years. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. On perusal of submission, it is seen assessee has received following amounts in cash exceeding Rs. 20,000/- from the following persons.

A.Y.	Received from	Amount in cash
2005-06	Shri Ram Swaroop Meena & Shri Ramkaran Meena	Rs. 80,000/-
2007-08	Shri Ram SwaroopMeena	Rs.2,05,000/-
2008-09	Shri Ram Swaroop Meena	Rs. 1,30,000/-
2004-05	Shri Ram Swaroop Meena	Rs. 2,00,000/-

Shri Ram Swaroop Meena, elder brother/ brother and also the key person of the Narayanji Gajjak Group in A.Ys 2007-08, 2008-09 & 2004-05 and Shri Ram Swaroop Meena alongwith Shri Ram Karan Meena in A.Y. 2005-06 had given money in cash exceeding Rs. 20,000/- in violation of Section 269SS of the Act to the assessee as mentioned above. In this regard, assessee has contended that the aforementioned transactions are in the nature of “current account on urgent basis to meet business liability”. Explanations given in this regard does not seem to be bonafide as assessee has failed to explain exact nature of ‘urgent business requirement’. It is submitted that a/c maintained by assessee is a composite a/c which contain details of entries in cheque (especially for salary transaction & loan transaction) and cash transactions but even after repeated request, no such ledger a/c or cash book of company. In view of this, case laws as relied upon will be of no use to the assessee.

Therefore, in view of facts and circumstances of the case, which assessee has failed to justify its contention, penalty levied u/s 272D of the Act in following cases are hereby justified.

ITA No.	A.Y.	Penalty imposed	Order dt.
301/12-13	2005-06	Rs. 80,000	22/06/2012
302/12-13	2007-08	Rs. 2,05,000	22/06/2012
303/12-13	2008-09	Rs. 1,30,000	22/06/2012
364/12-13	2004-05	Rs. 2,00,000	28/06/2012

Assessee's appeal fails in Gr. No. 1 in ITA No. 301,302,303 & 364/12/-13 for A.Y. 2005-06, 2007-08, 2008-09 & 2004-05

In the result, these appeals stands dismissed as ITA No. 301 to 303 & 364/12/-13 for A.Y. 2005-06, 2007-08, 2008-09 & 2004-05.”

3.2 During the course of hearing, the ld. AR submitted that the assessee had received the following funds in form of contribution / gift from his real elder brothers (Ramswaroop Meena & Ramkaran Meena) in the assessment year 2004-05, 2005-06, 2007-08 & 2008-09 respectively.

A.Y. 2004-05

A.Y. 2005-06

S.N.	Name of person	Date	Amount taken		Name of person	Date	Amount taken
1.	Ramswaroop Meena	2-04-2003	2,00,000		Ramswaroop Meena	15-08-04	20,000
2.	-	-	-		Ramkaran Meena	31-03-05	60,000
	Total		2,00,000		Total		80,000

A.Y. 2007-08

A.Y. 2008-09

S.N.	Name of person	Date	Amount taken		Name of person	Date	Amount taken
1.	Ramswaroop Meena	19-01-07	1,05,000		Ramswaroop Meena	28-01-08	60,000
2.	Ramswaroop Meena	2-03-07	1,00,000		Ramswaroop Meena	2-03-07	70,000
	Total		2,05,000		Total		1,30,000

The Id. AR of the assessee filed the following similar written submissions relating to above appeals which have been taken into consideration.

“1. That funds are taken by appellant in form of contribution/ gift from his elder brothers and are recorded for in his books of accounts. These funds are received for meeting his personal needs. The appellant has taken these funds to meet his urgent family requirement i.e. for payment of school fees of children, for family and house hold expenditures. The copy of confirmation of accounts were submitted to Id AO and Id CIT(A) and both the lower authorities have erred in levying and confirming the penalty u/s. 271D, which may please be deleted.

2. That funds received by appellant is wrongly termed as loan/ deposit by Id AO and confirmed by CIT(A). Loan refers to money lent to a borrower for Short-term, long term or for specified period. Loan carries a specific rate of interest as agreed between the lender & the borrower and the terms of the agreement. A loan may be for general purpose or for specific purpose. On the other hand advance refers to money paid in advance to anyone to meet specific future expense, liability or to tide over some specific requirements. One major difference between the two is “Loan” is always under a contractual arrangement between the lender and the borrower & it carries interest but generally advance is made without agreement and may not carry interest in all cases.

The Term “Loan” is defined in the law lexicon as-

To loan is to lend a thing to another, either gratuitously or for reward. In order to constitute loan, there must be a thing loaned, a lender, and a borrower, as well as a contract between parties.

The Term “Deposit” is defined in the law lexicon as –

Thing stored or entrusted for safe keeping; An act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind; a naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it; the delivery of a thing for custody, to be redelivered on demand, without compensation. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions.

The Word “Advance” as defined in law lexicon conveys the idea of furnishing, tendering or offering something which may be returned in the same form, it is also defined as Money in whole or in part, forming the consideration.

Thus funds coupled with above conditions may be termed as loan or advance and merely funds are transferred in between of family members can not be termed as loan or deposit, therefore action of Id AO and confirming the CIT(A) may please be declared as illegal and may please be deleted.

3. The transactions are in between real brothers of joint family. The family tree of appellant is given below:-

- (i) Shri Ramswroop Meena – elder brother
- (ii) Shri Ramkaran Meena – elder brother
- (iii) Shri Rajendra Meena – appellant himself
- (iv) Shri Jitendra Meena – younger brother

That the appellant resides in joint family alongwith his brother’s family and engaged in old parental business of manufacturing & sale Gajak, Tilpatti etc. During the course of search proceedings statement recorded u/s. 132(4) of Shri Ramswroop Meena (elder brother) and while replying answer to question no.: 6,8,9,12,13,17 which were in respect of entire family consisting of all his three elder brother and their families and answered by Mr. Ramswroop Meena (elder brother) only and no question was asked from any of the family members, and these statements were relied upon and no objection / counter examination were made by Income Tax Authority, which also corroborates that department has accepted that Narayanji Group is having one & joint family. When it is clear cut finding by Investigating Officer that appellant lives in joint family having common control of funds by elder brother (Shri Ramswroop Meena), then treating transfer of funds from one brother to another and amongst family members is absolutely illegal by treating the same as loan or

deposit in hands of appellant. For being loan there has to be two persons and coupled with conditions of repayment of funds.

That one single person Mr. Ramswroop Meena is managing entire business affairs of group and decision to transfer funds from one concern to another or to repay the funds could have been said to have been largely influenced by the same individual, it cannot be said that transaction partake the nature of either deposit or loan. The cash of all family members were being kept with key person (Mr. Ramswroop Meena) and there is no physical movement of cash from one person to another person and merely book entries are being passed upon. The copy of Affidavit of Mr. Ramswroop Meena (elder brother) dt. 21.11.2011 which were submitted to Id AO and Id CIT(A) is also enclosed with written submission with the contention that one person was managing the entire business affairs of entire group.

4. The entire transaction is undertaken with bonafide intention. And no ingenuity is brought in the assessment order passed for the above year. The return income is accepted. When there is no case against assessee that these transactions had anything to do with evasion of tax or concealment of income.

5. That Id AO erred in levying of penalty u/s. 271D of the Act on entire amount of funds taken. That without admitting anything on our part it is submitted that penalty may not be levied on entire value of funds and may be levied only on funds which are higher than Rs. 20,000/-. In the present case funds taken from each person is upto Rs. 20,000/-, therefore levy of penalty illegal and may please be deleted.

6. That we placed reliance on following judgments which are squarely covers the appellant's case:-

1. CIT Vs. Maheshwari Nirman Udyog
2008 – 302 ITR – 201 (Rajasthan High Court)

Held that whether a particular transaction was genuine or otherwise is a question of fact and if it had been found by appellate authority that the assessee had shown reasonable cause for accepting the money in cash in that circumstances penalty u/s. 271D can not be imposed.

2. CIT Vs. Yasundara Devi
2015 – 66 (II) ITCL – Page 578 (Chennai Tribunal)

Held that transaction between family members were genuine and bona fide transactions. The source of money had already been

disclosed in the return of HUF. Further it was not the case of Revenue that assessee had introduced unaccounted money in the books of account as the very purpose of bringing in the provisions of section 269SS and 269T was to curb the practice of introducing black money into books of account. The assessee had no intention to evade tax and did not make any attempt to make any liability. The individual had accepted loans from HUF for purchase of property in their individual names and had reasonable cause for accepting such loans. Therefore, the order of CIT(A) sustaining the penalty levied by AO was not justified and same was set aside. Reliance placed on judgment of CIT Vs. Yeshodha reported in 2013 – 351 ITR – page 265 – Madras High Court)

3. Dy. CIT Vs. Tirumalaraju Trinadhu Raju
2016 – 69 (II) ITCL – 342 (Chennai Tribunal)

Held that on perusal of ledger of loan account, it was found that assessee had accepted two deposits by way of money transfer from bank and balance credit was accepted by book adjustment. Assessee explained that amount representing the book entry was transferred from his wife account towards amount paid to third party by way of cheque on behalf of assessee. In view of above, assessee had not accepted any loans on deposits by cash in contravention of section 269SS. Thus merely on book entries no penalty can be levied u/s. 271D.

4. CIT Vs. Ajanta Dyeing & Printing Mills
2003 - 264 - ITR - Page 505 (Rajasthan High Court)

Held that while levying of penalty u/s. 271D for violation of provision of section 269SS adjustment of Rs. 20,000/- is to be allowed which is permissible u/s. 269SS.

5. Sudha Agro Oil & Chemical Industries Vs. Addl. CIT
2016 – Tax Publisher (DT) – 2783 – Vishakhapatnam Tribunal

Held that “after taking into consideration of judgment of Raj. High Court in case of Ajanta Dying & Printing Mills held that “penalty shall be levied after excluding Rs. 20,000/- in each case as permissible u/s. 269SS of the Act.”

Conclusively, the Id. AR of the assessee prayed that the Id. CIT(A) has erred in confirming the imposition of penalty of Rs. 2.00 lacs, Rs.

80,000/- , Rs. 2.05 lacs and Rs. 1.30 lacs for the assessment years 2004-05, 2005-06, 2007-08 and 2008-09 respectively u/s 271D of the Act which should be deleted.

3.3 The Id. DR relied on the orders of the lower authorities.

3.4 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the lower authorities have confirmed the imposition of penalty u/s 271D of the Act of Rs. 2.00 lacs, Rs. 80,000/-, Rs. 2.05 lacs and Rs. 1.30 lacs for the assessment years 2004-05, 2005-06, 2007-08 and 2008-09 respectively. It is noted from the records that the funds were taken by the assessee in form of contribution / gift from his elder brothers which are recorded in the books of the assessee. These funds were received for meeting his personal needs. It is also noted that the assessee had taken these funds to meet out his urgent family requirements i.e. for payment of school fees of children and house hold expenditures. The assessee had submitted the confirmation of accounts before the lower authorities. It is also noted that these transactions are between the real brothers of joint family. It is also noted that one single person Shri Ramswaroop Meena is managing entire business affairs and group and decision to transfer of funds from one

concern to another or to repay the funds is done by the same individual. The copy of affidavit of Shri Ramswaroop Meena dated 21-11-2011 is placed on record indicating therein his contention that one person is managing the entire business of entire group. The ld. AR of the assessee submitted that entire transaction is undertaken with bona fide intention and no ingenuity is brought in the assessment orders for the year under consideration. The return of income of the assessee are accepted and it is also submitted that there is no case against the assessee that these transactions had anything to do with evasion of tax or concealment of income. It may be noted that Section 271D read with Section 269SS was introduced by the legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. It is further noted that on similar type of issue the ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT vide its order dated 13-06-2014 in ITA No. 847/JP/2011 for the assessment year 2006-07 had deleted the penalty u/s 271D of the Act by observing as under:-

“4.0 We have heard the rival submissions and perused the relevant material available on record. From the record there is no shred of doubt about the genuineness of the transactions and their disclosure in the books of account and returns of both the assessee who

happen to be husband and wife, carrying on the business as sister concerns. Section 271D read with Section 269SS was introduced by the legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. The assessee has given an explanation in our view is not unreasonable and is based on business exigencies also for payments to labourers and lenders. Under these circumstances, we are of the view that the transactions being genuine and the assessee having offered reasonable explanation justifying these cash transactions, the impugned penalty u/s 271D is not leviable. Our view is fortified by the judgement of Hon'ble Jurisdictional High Court in the case of CIT vs. Raj Kumar Sharma (supra) and the judgement of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Saini Medical Store (supra) which is followed by Hon'ble P & H High Court in the case of CIT vs. Sunil Kumar Goel (supra). Thus in view of the facts and circumstances of the case and the decisions relied on above, the penalty is deleted.

Respectfully following the decision of ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT (supra) and also in view of the following case laws as relied upon by the Id. AR of the assessee namely :-

1. CIT vs. Maheshwari Nirman Udyog (2008) 302 ITR 201 (Raj.)
2. CIT vs. Yasundara Devi (2015) 66 (II)ITCL 578 (Chennai Tribunal).
3. DCIT vs. Triumalaraju Trinadhu Raju (2016) 69(II) ITCL 342 (Chennai Tribunal).
4. CIT vs. Ajanta Dyeing & Printing Mills (2003) 264 ITR 505 (Raj.)
5. Sudha Agro Oil & Chemical Industries vs. Addl. CIT (2016) Tax Publisher (DT) 2783 Vishakhapatnam Tribunal

I direct to delete the penalty of Rs. 2.00 lacs, Rs. 80,000/- , Rs. 2.05 lacs and Rs. 1.30 lacs for the assessment years 2004-05, 2005-06, 2007-08

and 2008-09 respectively u/s 271D of the Act sustained by the ld. CIT(A) in assessee's case for the assessment years (supra). Thus above appeals of the assessee bearing ITA No. 1006, 814, 1007 & 1008/JP/2016 of the assessee u/s 271D of the Act are allowed.

ITA No. 815/JP/2016 – A.Y. 2010-11- u/s 271E of the Act

4.1 Apropos solitary ground of assessee for imposition of penalty of Rs. 95,000/- u/s 271E of the Act, the facts as emerges from the order of the ld. CIT(A) is as under:-

3.1.2. I have also considered assessee's submission and carefully gone through the assessment order and penalty order passed u/s 271E of the Act. On perusal of submission, it is seen that assessee had paid in cash to Shri Ramswaroop Meena Rs. 95,000/- on 31-12-2009. During the appellate proceedings, it is submitted that directors namely Shri Ramswaroop Meena is director in the company and the amount was credited to his a/c and the balance standing are out of accumulated fund in respect of labour work charges paid by the company. The explanation given does not seem to be justified. Even A.R. was asked to further elaborate contribution of Shri Ramswaroop Meena as Director, but no further details have been provided till date. Even, after repeated request, assessee has not filed copy of ledger a/c which shows that amount accumulated in the a/c represent remuneration payable to the director.

In view of these facts and circumstances, assessee's contention with regard to payment made in cash to Shri Ramswaroop Meena is without any basis. Accordingly, penalty levied u/s 271E of the Act is sustained. Assessee's appeal fails in Gr. No. 1.

4. In the result, the appeal stands dismissed for A.Y. 2010-11.”

4.2 During the course of hearing, the Id. AR of the assessee submitted that the assessee had paid following fund in the form of contribution / gift to his real brother Shri Ramswaroop Meena in the assessment year 2010-11.

S.N.	Name of person	Date	Amount taken	Nature of funds
1.	Ramswaroop Meena	31-12-2009	95,000/-	Funds in form of contribution/ gift by real elder brother

The Id. AR of the assessee filed the written submission to this effect which has been taken into consideration. The case laws relied on by the Id. AR of the assessee are as under:-

1. M/s. Shreepati Developer & Builder Ltd. vs. Addl. CIT (2015) – 65 (II) ITCL page 423 (Mumbai Tribunal) –

Held that the genuineness of the transactions was not disputed. No malafide act was attributed to the transactions. Revenue has not suffered any loss and there was no attempt of any money laundering or evasion of tax and concealment of income. The findings given by the Coordinate Bench of Mumbai Tribunal in case of Lodha Builders (P) Ltd. (163 TTJ 778) were squarely applicable on this issue also. Respectfully following the same, the penalty levied u/s 271E in this case was also ordered to be deleted.

2. CIT Vs. Yasundara Devi

2015 – 66 (II) ITCL – Page 578 (Chennai Tribunal)

Held that transaction between family members were genuine and bona fide transactions. The source of money had already been disclosed in the return of HUF. Further it was not the case of Revenue

that assessee had introduced unaccounted money in the books of account as the very purpose of bringing in the provisions of section 269SS and 269T was to curb the practice of introducing black money into books of account. The assessee had no intention to evade tax and did not make any attempt to make any liability. The individual had accepted loans from HUF for purchase of property in their individual names and had reasonable cause for accepting such loans. Therefore, the order of CIT(A) sustaining the penalty levied by AO was not justified and same was set aside. Reliance placed on judgment of CIT Vs. Yeshodha reported in 2013 – 351 ITR – page 265 – Madras High Court)

3. CIT Vs. Ajanta Dyeing & Printing Mills
2003 - 264 - ITR - Page 505 (Rajasthan High Court)

Held that while levying of penalty u/s. 271D for violation of provision of section 269SS adjustment of Rs. 20,000/- is to be allowed which is permissible u/s. 269SS.

4. Sudha Agro Oil & Chemical Industries Vs. Addl. CIT
2016 – Tax Publisher (DT) – 2783 – Vishakhapatnam Tribunal

Held that “after taking into consideration of judgment of Raj. High Court in case of Ajanta Dying & Printing Mills held that “penalty shall be levied after excluding Rs. 20,000/- in each case as permissible u/s. 269SS of the Act.”

Conclusively, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in confirming the imposition of penalty u/s 271E of the Act of Rs. 95,000/- for the assessment year 2010-11 which should be deleted.

4.3 The ld. DR relied on the orders of the lower authorities.

4.4 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee had given the fund to the tune of Rs. 95,000/- in the form of contribution/ gift to his elder brother Shri Ramswaroop Meena on 31-12-2009 which is

recorded in his books of accounts. These funds are paid for meeting urgent need of his elder brother. The confirmation of accounts were submitted before the lower authorities . It is noted that return of income filed by the assessee is accepted and there was no case against the assessee that these transactions had anything to do with evasion of tax or concealment of income. It is also noted from the record that entire transaction is undertaken with bona fide intention. It is also noted that on similar type of issue the ITAT (SMC) Jaipur Bench in the case of Lallu Ram Saini vs. ITO (ITA No. 676/JP/2015 for the assessment year 2008-09 vide order dated 21-10-2016) had deleted the penalty u/s 271E of the Act by observing as under:-

“2.5 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee had made repayments of loans of Rs. 4,59,560/- i.e. Rs. 3,28,260/- to M/s. Magma Shrachi Finance Ltd. and Rs. 1,31,330/- to M/s. Shri Ram Stone Cutting Industries for which the Addl. CIT observed that it is a violation of provisions of Section 269T of the Act and thus he imposed a penalty of Rs. 4,59,560/- In first appeal, the Id. CIT(A) confirmed the penalty of Rs. 3,28,260/- only in the case of M/s. Magma Shrachi Finance Ltd. on account of transactions of payment by cash by the assessee. It is noted from the ledger account of the assessee (page 1 of the paper book of the assessee) that the assessee had raised a loan of Rs. 5.00 lacs from M/s. Magma Shrachi Finance Ltd. on 7-04-2007 and subsequently the assessee used to pay the instalments every month in cash to the representative of the

finance company who issued the receipts for taking the cash payment from the parties. The submissions of the ld. AR of the assessee reveals that the payment could not be made by cheque as the finance company did not accept the outstation cheque. It is also noted that the assessee has filed the copies of the cash receipts issued by the representative of M/s. Magma Shrachi Finance Ltd. which is filed at pages 2 to 8 of the paper book. The assessee had submitted the bifurcation of the total amount of Rs. 3,28,260/- paid to M/s. Magma Shrachi Finance Ltd. which comprises of Rs. 41,418/- in respect of payment of interest and Rs. 2,86,842/- in respect of repayment of loan amount. During the course of hearing, the ld. AR of the assessee relied on the order of ITAT Gauhati Bench in the case of Addl.CIT vs. Smt. Prahati Baruah 133 Taxman 74 (Maz) wherein it is held that the introduction of section 269T and section 271E in the statute is to prevent proliferation of black / unaccounted money deposited with banks and other persons by introducing the system of repayment through account payee cheques and drafts and, thus, to ensure that the identity of the payee is established. Where the identity of the lender to whom repayment had been made was known to the department and the genuineness of the loan transaction was not in doubt, it could not be said that the breach of law, if any, was deliberate and the default, if any, could be said to be a technical default for which no penalty would be leviable. Hence, in view of the above deliberations and the case law cited (supra), I direct the AO to delete the penalty of Rs.3,28,260/- imposed u/s 271E of the Act. Thus the appeal of the assessee is allowed.’’

Respectfully following the decision of ITAT (SMC), Jaipur Bench in the case of Lallu Ram Saini vs. JCIT (supra) and also in view of the following case laws relied upon by the ld. AR of the assessee namely:-

1. M/s. Shreepati Developer & Builder Ltd. vs. Addl. CIT (2015) – 65 (II) ITCL page 423 (Mumbai Tribunal) .
2. CIT Vs. Yasundara Devi
2015 – 66 (II) ITCL – Page 578 (Chennai Tribunal)
3. CIT Vs. Ajanta Dyeing & Printing Mills
2003 - 264 - ITR - Page 505 (Rajasthan High Court)
4. Sudha Agro Oil & Chemical Industries Vs. Addl. CIT
2016– Tax Publisher (DT) 2783 – Vishakhapatnam Tribunal

I direct to delete the penalty of Rs. 95,000/- u/s 271E of the Act sustained by the Id. CIT(A) in assessee's case for the assessment year 2010-11.

Thus the appeal of the assessee is allowed.

5.0 In the result, the above appeals of the assessee are allowed.

Order pronounced in the open court on 18 /01/2017

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18 /01/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Rajendra Meena, Jaipur
2. प्रत्यर्थी / The Respondent- The JCIT, Central Range, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1006/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar