

***LAL SINGH CHOUHAN vs. JOINT COMMISSIONER OF INCOME TAX***

*IN THE ITAT INDORE*

*MANISH BORAD, AM & MADHUMITA ROY, JM.*

*ITA No. 104/Ind/2020*

*Jul 27, 2021*

*(2021) 62 CCH 0366 IndoreTrib*

Legislation Referred to

*Section 271E, 143(3)*

Case pertains to

*Asst. Year 2009-10*

Counsel appeared:

*S.N. Agrawal, CA for the Appellant.; Harshit Bari, Sr. DR for the Revenue*

**MANISH BORAD, AM.**

1. The above captioned appeal filed at the instance of the assessee for Assessment Year 2009-10 is directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT], Ujjain dated 22.01.2020 which are arising out of the order u/s 143(3) r.w.s. 147 of the Act dated 20.01.2017 framed by JCIT, Ratlam.

The assessee has raised following grounds of appeal:

*[1] That on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming the levy of penalty under section 271E of the Income-Tax Act, 1961 even when the penalty order as passed under section 271E of the Income-Tax Act, 1961 was without jurisdiction and barred by limitation of time.*

*[2] That on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming the levy of penalty under section 271E of the Income-Tax Act, 1961 even when no proper satisfaction was recorded by the assessing officer.*

*[3] That on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming the levy of penalty under section 271E of the Income-Tax Act, 1961 of Rs.4,00,000/- without properly appreciating the facts of the case and submission made before him more so when no such amount of loan was found credited in the books of accounts of the appellant which was repaid in cash.*

2. Brief facts as culled out from the records are that a search was conducted in the case of person namely Shri Ramesh Chand Upadhyia and certain documents were impounded which also included some documents allegedly showing transactions of cash loan given and taken with the assessee. Assessment of Mr. Ramesh Chand Upadhyia was completed u/s 143(3) r.w.s. 147 of the Act for A.Ys. 2008-09 & 2009-10. This information of cash loan transactions were forwarded to the Ld. AO of the assessee showing that there as repayment of loan Rs.5,50,000/- in cash which was in contravention to the provision of section 269T of the Act. Penalty proposal was received by Id. AO, Jhabua. Accordingly, notice issued for levy of penalty u/s 271E of the Act. Statement of the assessee was taken wherein he categorically denied to have taken any cash loan from Mr. Ramesh Chand Upadhyia. During the penalty proceedings again it was submitted that no loan transaction have been taken or repaid by the assessee during A.Ys. 2007-08 & 2009-10 with Mr. Ramesh Chand Upadhyia. Ld. AO was not convinced. Though the information was received for repayment of cash loan at Rs.5,50,000/- but Ld. AO levied the penalty u/s 271E of the Act at Rs.4,00,000/-

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) but could not get relief. It was contended before the Ld. CIT(A) that in view of the settled judicial precedence no penalty was leviable as no assessment proceedings were pending in the case of assessee and so there was no satisfaction recorded by the Id. AO to initiate penalty. It was also submitted that penalty levied for A.Ys. 2007-08 & 2009-10 u/s 271D of the Act and for A.Y.2008-09 u/s 271E were of the Act deleted by Ld. CIT(A) accepting the assessee's contention that no cash loan was taken/repaid. However, in the instant case Ld. CIT(A) was not convinced and he confirmed the penalty levied u/s 271E of the Act observing as follows:

*"5. I have gone through the facts of the case leading to levying of penalty. In the written argument it has been re-iterated that there was no loan transaction and therefore the question of levy of penalty does not arise. The appellant also referred to the order passed by my predecessor dated 22.08.2019 where penalty levied u/s 271D has been deleted.*

*6. I have perused the order of my predecessor referred supra and I am not in agreement with the finding given therein. It is seen that my predecessor deleted the penalty by noting that the AO failed to bring any material in support of the loan transaction. This finding of my predecessor is against the facts. It is seen from the penalty order passed by JCIT Ratlam Range that the basis of levy od penalty is noting on the seized documents, which was seized from Ramesh Chandra Upadhyia. The notice contains date wise repayment of loan. Therefore there was basis for levy of penalty u/s 271E.*

*7. In the light of aforesaid facts I am of the considered opinion that there was adequate basis for levy of penalty in the form of noting on the seized documents and therefore penalty levied u/s 271E at Rs.4,00,000/- is confirmed.*

4. Now the assessee is in appeal before this Tribunal. Ld. counsel for the assessee vehemently argued referring to the detailed written synopsis as well as paper book filed on 15.06.2012 running from 1 to 70 pages. Two fold contentions were made; firstly, that there is no evidence suggesting that assessee has taken any loan from Mr. Ramesh Chand Upadhyia so there remains no possibility of repayment of alleged cash loan, no cross examination was done between the assessee and Mr. Ramesh Chand Upadhyia and Revenue authorities in assessee's own case deleted the penalty levied u/s 271D of the Act which clearly proves that no cash loan was taken. Secondly, it was contended that on legality also the assessee deserves to succeed as there was no pending assessment in the case of assessee and in view of the decision of Coordinate Bench Chandigarh in the case of Baldev Singh vs. ACIT (2018) 93 Taxman.com 212 impugned penalty deserves to be deleted. Reliance was also placed on the following decision mentioned in the synopsis:-

- i. *CIT Vs Manohar Lal Thakral as reported in [2018] 93 taxmann.com 156 (Punjab & Haryana)*
- ii. *CIT Vs Jai Laxmi Rice Mills Ambala City as reported in [2015] 64 taxmann.com 75 (SC)*
- iii. *ACIT Vs M/s Narsi Iron & Steel Pvt. Ltd. [Appeal No: I.T.A. No. 2866/Del/2013](Delhi -Trib.)*
- iv. *Prithvi Singh Poonia Vs JCIT [Appeal No: ITA No. 3108/Ahd/2015] (Ahmedabad Trib.)*
- v. *DCIT Vs M/s Karan Empire Pvt. Ltd. [Appeal No: ITA No. 409/Chd/2011] (Chandigarh - Trib.)*
- vi. *Smt. S.B. Patil Vs JCIT [Appeal No: ITA No. 1053 & 1054 (BNG.)/2014 (Bangalore Trib.)*

5. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the orders of both lower authorities but could not controvert this fact that there is no evidence on record could show that assessment proceedings for A.Y. 2009-10 were carried out in the case of assessee.

6. We have heard rival contentions and perused the records placed before us. Sole issue raised in this appeal by the assessee is challenging the finding of Ld. CIT(A) confirming the levy of penalty u/s 271E of the Act at Rs.4,00,000/- for the alleged contravention of the provision of section 269T of the Act for repayment of loan in cash exceeding the permissible limit.

7. We note that pursuant to search in the case of another person namely Shri Ramesh Chand Upadhyia certain documents were impounded. Assessment proceedings u/s 143(3) r.w.s. 147 of the Act was completed in the case of Ramesh Chand Upadhyia. Information was passed on in the form of penalty proposal to ITO, Jhabua on 09.06.2016 for levying penalty u/s 271E of the Act on the cash loan repayment of Rs.5,50,000/- by cash. Though it was contended that neither any loan was taken nor any cash loan was repaid in contravention of provision of u/s 269T of the Act, assessee failed to find any favour from both the lower authorities.

8. We further note that the statement of the assessee was recorded on oath on 01.02.2016 u/s 131(1) of the Act wherein repeatedly assessee denied the charge of having taken or repaid any cash loan from Ramesh Chand Upadhyia. Further penalty u/s 271D of the Act was levied on the assessee for A.Ys. 2007-08 & 2009-10 and also u/s 271E for A.Y. 2008-09 and Ld. CIT(A) decided in favour of the assessee deleting all these penalties accepting the contentions of assessee that no cash loan was received/repaid from Ramesh Chand Upadhyia.

9. We further note that there is no evidence on record to suggest that any assessment proceedings were carried out by the Ld. AO in the case of assessee. Even Ld. DR was fair enough to accept this fact. It is a settled judicial precedence that for initiating penalty proceedings Ld. AO has to first record a proper satisfaction in the assessment order by analyzing the facts. So for levy of penalty u/s 271E of the Act in the case of assessee Ld. AO has to clear the hurdle by recording a satisfaction in the assessment order which in this case is absent.

10. In the instant case it is an undisputed fact that the assessment proceedings were not pending before Ld. AO for A.Y. 2009-10 still the penalty has been levied u/s 271E of the Act.

11. Coordinate Bench Chandigarh in the case of Baldev Singh Vs. ACIT (Supra) has dealt with very same issue and has decided in favour of the assessee observing as follows:

*"15. Chapter-XXI of the Income Tax Act deals with penalty imposable/leviable. Penalty under various sections are imposable by the revenue authorities, where they are satisfied that*

*particular default defined under the respective section/s has been committed by the assessee. The language of section is clear that the penalty can be imposed only if there is violation of one or more of the circumstances mentioned in the section. The levy of penalty for failure to perform statutory obligation prescribed under the Act is a matter of discretion of the authorities to be exercised judicially and on consideration of relevant circumstances and the law laid down by the Apex Court on the issue of levy of penalty. Imposition of penalty in the given set of circumstances is not mandatory but discretionary and in order to exercise its power on levy of penalty under the respective section/ s, primary condition is that the proceedings in respect of the said assessee for the captioned assessment year should be pending before the Assessing Officer to come to the conclusion that the given set of facts and circumstances merits the initiation of penalty proceedings in the case. In the facts of the present case before us, no proceedings were initiated for the financial year 2004-05 i.e. assessment year 2005-06, which is the year to which the aforesaid transaction of accepting and payment of the cash loan relates. The show-cause notice was issued to the assessee by the Assessing Officer, however, in the proceedings relating to assessment year 2007-08 and even penalty proceedings were initiated under sections 271D and 271E of the Act while completing assessment order relating to assessment year 2007-08. We find no merit in the said initiation of penalty proceedings under sections 271D and 271E of the Act relating to assessment year 2005-06, while completing assessment proceedings relating to assessment year 2007-08."*

12. Further Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala (supra) has held that "for initiating the process of levying penalty u/s 271E of the Act recording of satisfaction in the assessment order by the Ld. AO is mandatory else no such penalty could be levied".

13. We, therefore, in the given facts and circumstances of the case and respectfully following the decisions referred hereinabove, are of the considered view that Ld. AO erred in levying penalty u/s 271E of the Act in the case of assessee as firstly revenue failed to prove whether assessee actually received any cash loan or repaid any cash loan from R.C. Upadhya and secondly Ld. AO was not having any jurisdiction to levy the penalty as no assessment proceedings were pending in the case of assessee and thus no satisfaction was recorded by the Ld. AO to initiate the penalty. Thus, finding of Ld. CIT(A) is set aside and Ld. AO is directed to delete the penalty of Rs.4,40,000/- levied u/s 271E of the Act. Grounds raised by the assessee are allowed.

14. In result, appeal filed by the assessee in ITA No.104/Ind/2020 is allowed.

Order was pronounced as per Rule 34 of the I.T.A.T. Rules 1963 on 27.07.2021.

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**Customized Notes**

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