

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 960/JP/2016  
निर्धारण वर्ष/Assessment Year : 2009-10

Income Tax Officer, Ward-4(4), Jaipur.	बनाम Vs.	Shri Prashant Sharma, A-34, Nehru Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFEPS4515D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 961/JP/2016  
निर्धारण वर्ष/Assessment Year : 2009-10

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निर्धारिती की ओर से/ Assessee by : Shri V.K. Jain (C.A.)  
राजस्व की ओर से/ Revenue by : Shri Vrindera Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 16/10/2017  
उदघोषणा की तारीख/Date of Pronouncement: 15/11/2017

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the Revenue against two separate orders  
by the CIT(A) both dated 16.08.2016 arising from the penalty orders

passed u/s 271D and 271E for the A.Y. 2009-10. The Revenue has raised the following grounds as under:-

In ITA No. 960/JP/2016

- "1. Whether on the facts and in the circumstances of the case and in law, Id. CIT(Appeals) has erred in deleting the penalty of Rs. 1,48,22,585/- imposed u/s 271D as the loan/deposits were accepted/received in cash by the assessee?*
- 2. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."*

In ITA No. 961/JP/2016

- "1. Whether on the facts and in the circumstances of the case and in law, Id. CIT(Appeals) has erred in deleting the penalty of Rs. 1,17,04,411/- imposed u/s 271E as the loan/deposits were repaid in cash by the assessee?*
- 2. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."*

2. During the course of scrutiny assessment u/s 143(3) the AO noticed that the assessee has received cash on various dates in person as well as in bank account and subsequently paid the amount in cash to M/s MPPL which is in contravention of the provisions of section 269SS and 269T of the Act. The AO called certain information from M/s MPPL, in response to which, the company had submitted that the assessee is having imprest account in the books of the company. The AO found that there was opening cash balance of Rs. 19,85,495/- on 01.04.2008 in the hands of the assessee and during the period the assessee has

also received cash amounting to Rs. 1,48,22,585/- on various dates, the closing balance as on 31. 03.2009 was at Rs. 51,03,669/-. Since the assessee has received substantial amount in cash and also paid a substantial amount in cash, therefore, the AO initiated the penalty u/s 271D as well as 271E of the Act. The assessee raised objections before the AO including the issue of limitation that the limitation for passing the penalty order u/s 271D and 271E would reckon from the date when the show cause notice was issued by the AO and not from the date when the show cause notice was issued by the Joint Commissioner who is competent to pass the penalty orders. The AO after considering the facts and circumstances of the case rejected the contention of the assessee and passed the orders of levy of penalty u/s 271D as well as 271E of the Act. The assessee challenged the action of the AO before the CIT(A) and raised the issue of validity of the impugned orders passed by the Joint Commissioner u/s 271D and 271E being barred by limitation as provided u/s 275 of the Act. The Id. CIT(A) held that the orders passed by the Joint Commissioner u/s 271D and 271E are beyond 6 months from the date of initiation of the penalty proceedings vide first show cause notice issued by the AO and accordingly the Id. CIT(A) set aside the penalty orders passed u/s 271D and 271E.

3. Before us, the Id. DR has submitted that initiation of penalty proceedings u/s 271D and 271E would be reckoned by the notice issued by Joint CIT who is competent to levy of penalty therefore, any notice issued by the Assessing officer who is not competent to proceed with the penalty proceedings u/s 271D and 271E of the Act will be inconsequential for the purpose of deciding the limitation. Thus the Id. DR has contended that the Id. CIT(A) committed an error by computing the limitation for the purpose of passing the order u/s 271D and 271E of the Act from the date of the notice issued by the AO instead of the date of the notice issued by the JCIT. He has relied upon the decision of Hon'ble Kerala High Court in case of Grihlaxmi vision Vs. CIT 379 ITR 100 and submitted that the Hon'ble High Court has held that the penalty proceedings under the provisions of section 271D and 271E are initiated by the Joint commissioner.

4. On the other hand, the Id. AR of the assessee has submitted that the ITO issued a notice dated 30.12.2011 u/s 274 for levy of penalty u/s 271D and 271E and thereafter when the matter was transferred to the J.CIT an another show cause notice was issued by the ACIT on 10.09.2012. Finally the impugned orders u/s 271D and 271E were passed on 25.03.2013 which are beyond the limitation provided u/s

275(1)(c) of the act. He has relied upon the decision of Hon'ble jurisdiction High Court in case of CIT vs. Jitendra Singh Rathore 352 ITR 327. Thus the Id. AR has contended that the Id. CIT(A) has followed the decision of the Hon'ble jurisdiction High Court and therefore no fault cannot be found in the impugned orders of the CIT(A).

5. We have considered the rival submission as well as relevant material on record. There is no dispute that there are two show cause notices issued u/s 274 of the Act for initiation of penalty u/s 271D and 271E of the Act. The first show cause notice was issued by the ITO on 30.12.2011 at the time of completion of the assessment and the second show cause notice was issued thereafter by the additional/Joint Commissioner on 10.09.2012. The assessee has raised the question of validity of the orders passed u/s 271D and 271E being barred by limitation as these orders dated 25.03.2013 as per the assesseees were beyond the period of 6 months from the date of the first show cause notice dated 30.11.2011 the limitation as provided u/s 275(1)(c) of the Act. So far as the fact of issuing two show cause notices one by the ITO on 30.12.2011 and another by the Additional/Joint Commissioner on 10.09.2012, the same is not disputed by the Revenue. Therefore question arises whether the limitation for the purpose of levy of penalty

u/s 271D and 271E would reckon from the date of show cause notice issued by the ITO. Though he was not competent to pass the order u/s 271D and 271E or from the date on which the show cause notice issued by the Additional/Joint Commissioner on 10.09.2012. The Id. AR has placed reliance on the decision of the Hon'ble jurisdiction High Court in case of CIT vs. Jitendra Singh Rathore (supra) whereas the Id. DR has relied upon the decision of Hon'ble Kerala High Court in case of Girhlaxmi Vs. AIT (supra). We find that there are divergent views on this point of reckoning of limitation from the date of issuing the notice by the ITO or by the JCIT. The Hon'ble jurisdiction High Court has taken a view that even though the AO was not competent to pass order u/s 271D and 271E the limitation would reckon from the date of show cause notice was issued by the AO whereas, the Hon'ble Kerala High Court held that the proceedings for levy of penalty u/s 271D and 271E are initiated with issuance of notice by Joint Commissioner and not by the Assessing Officer. Therefore the Hon'ble Kerala High Court held that the limitation would reckon from the date of the show cause notice issued by the Joint Commissioner. Thus it is clear that two different High Courts have taken the views contrary to each other however, for the Jaipur Benches of this Tribunal the decision of the jurisdiction High

Court is binding precedent. The Hon'ble High Court in case of CIT Vs.

Jitendra Singh Rathore (*supra*) has held in para 8 to 10 as under:-

8. In the present case, the notice for issuance of the penalty proceedings under Section 271D of the Act for the alleged contravention of provisions of Section 269SS was issued to the assessee, of course by the AO, on 25.03.2003. Even if the matter had otherwise been in appeal before the CIT(A) against the original assessment order and the appeal was decided on 13.02.2004, the same was hardly of relevance so far the penalty proceedings under Section 271D were concerned. As held by this Court in *Hissaria Bros. (supra)*, completion of appellate proceedings arising out of assessment proceedings has no relevance over sustaining such penalty proceedings. As held clearly by this Court, in such a matter, clause (c) of Section 275 (1) would be applicable. Section 275(1)(c) could be noticed as under:-

"275. Bar of limitation for imposing penalties.

(1) No order imposing a penalty under this Chapter shall be 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."

9. In the present case, the first show cause notice for initiation of proceedings was issued by the AO on 25.03.2003 and was served on the assessee on 27.03.2003. Obviously, the later period also expired on 30.09.2003 when six months expired from the end of the month in which the action for imposing the penalty was initiated. The order as passed by the Joint Commissioner of Income Tax for the penalty under Section 271D on 28.05.2004 was clearly hit by the bar of limitation and has rightly been set aside in the orders impugned.

10. In view of the above, our answer to the formulated question of law is that even when the authority competent to impose penalty under Section 271D was the Joint Commissioner, the period of limitation for the purpose of such penalty proceedings was not to be reckoned from the issue of first show cause by the Joint Commissioner; but the period of limitation was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings. For the purpose of present case, as observed hereinabove, for the proceedings having been initiated on 25.03.2003, the order passed by the Joint Commissioner under Section 271D on 28.05.2004 was hit by the bar of limitation. The CIT(A) and the Tribunal have, thus, not committed any error in setting aside the order of penalty.

We further note that the Hon'ble jurisdiction High Court has reiterated this view in case of CIT Vs. Banshi Lal Rathi vide order dated 17.05.2013 ITA No. 119 of 2011 following the decision in case of CIT Vs Jitendra Singh Rathore respectively following the decision of Hon'ble jurisdiction High Court. We do not find any reason to interfere with the impugned orders by the Id. CIT(A).

In the result, the appeals of the revenues are dismissed

Order pronounced in the open court on 15/11/2017

Sd/-  
(भागचंद )  
(Bhagchand)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/11/2017.

\*Santosh.

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

1. अपीलार्थी / The Appellant- The ITO), Ward-4(4), Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Prashant Sharma, A-34, Nehru Nagar, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 960&961/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar