

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 783/Del/2020
(Assessment Year: 2010-11)

Shagun Jewellers Pvt. Ltd, A-3/179, Paschim Vihar, West Delhi, Delhi PAN: AAFCS4608A	Vs.	JCIT, Range-23, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Lalit Mohan, CA
Revenue by:	Shri Prakash Dubey, Sr. DR
Date of Hearing	17/05/2021
Date of pronouncement	26/07/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-8, New Delhi [The Id CIT (A)] dated 15.01.2020 wherein, the appeal filed by the assessee against the order passed u/s 271D of the Income Tax Act, 1961 [The Act] by the Joint Commissioner of Income Tax, Range-23, Delhi,[The Id Adjudicating Authority] levying penalty of Rs. 1,58,00,000/- was confirmed.
2. Assessee has raised several grounds of appeal submitting that there is no violation of provision u/s 269SS of the Act and the penalty levied u/s 271D of the Act of Rs. 158,00,000/- upheld by the Id CIT(A) requires to be deleted.
3. The assessee has raised the following grounds of appeal:-
 - “1. That order dated 10.5.2018 under section 271D of the Act was barred by limitation and therefore, deserved to be quashed as such.
 2. That the learned Commissioner of Income Tax (Appeals)-8, New Delhi has erred both in law and on facts in upholding the levy of penalty of Rs. 1,58,00,000/- u/s 27 ID of the Act.
 - 2.1. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the penalty of Rs. 1,58,00,000/- u/s 271D of the Act as an enormous assumption that loan was received by

appellant from Sh. Asharam Bapu through Sh. Sant Lal Aggarwal and thus the penalty affirmed on such assumption is illegal.

- 2.2. That the authorities below have overlooked the statement of Sh. Sant Lal Aggarwal recorded during the course of remand proceedings wherein he has clearly denied that loan was provided to appellant in cash and, therefore penalty upheld is untenable.*
- 2.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since the preconditions for levying penalty u/s 269SS of the Act were absent, no valid order could have been framed u/s 27ID of the Act and, therefore, the impugned order is completely unsustainable in law.*
- 2.4 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in confirming the penalty without considering submission of appellant filed during quantum proceedings.*
- 2.5 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in confirming the penalty in mechanical manner by following the order of learned Commissioner of Income Tax (Appeal) vide appeal no. 10415/17-18 dated 19.11.2019 in appeal against order of assessment of quantum proceedings.*
- 3. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the penalty order, without granting the assessee fair' proper and reasonable opportunity, thereby violating the principles of natural justice.*

It is therefore prayed that it be held that, there is no violation of the provisions contained in section 269SS of the Act, and the penalty levied u/s 27ID of the Act of Rs. 1,58,00,000/- and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.”

4. Brief facts of the case shows that the assessee filed his return of income on 23.09.2010 at Rs. 31,22,920/-. Assessment u/s 143(3) of the Act was not passed. Subsequently, on receipt of information from Id ADIT (Investigation Wing) on 23.03.2016 regarding cash loan received and cash interest paid as well as accommodation entry, assessment proceedings were reopened by issue of notice u/s 148 of the Act on 31.03.2017. Subsequently, the assessment order was passed at Rs. 3,91,79,010/- u/s 143(3) read with section 147 of the Act on 30.12.2017.
5. During the course of reassessment proceedings the Id AO found that the assessee has taken deposits/ loan from one Mr. Asharam Bapu through Mr. Sant Lal Aggarwal exceeding Rs. 20,000/- in cash. Such violation of the provision of section 269SS of the Act was reported by the Id AO to Id JCIT on 27.02.2018. Consequently, show cause notice for levy of penalty 271D was issued on 07.03.2018 and 20.03.2018. One more opportunity

was given on 01.05.2018 to explain cash loan received of Rs. 75 lakhs and Rs. 83 lakhs from Asharam bapu through Sant lal Aggarwal. The assessee submitted his reply on 07.05.2018 stating that it has not entered into any transaction of loan in cash. The ld AO noted that during the course of assessment proceedings or during the course of penalty proceedings the assessee has not furnished any reasonable cause for deviation. The ld AO noted that during the course of search evidence in the form of entries of loan given was found from the premises from Asharam Bapu wherein, one of the disciples of Asharam Bapu Shri Devidas Thkamdas Chattani alias Dev Kumar has stated that the ledger names Bhagat pertain to the details of cash loan managed by Shri Sant Lal Aggarwal in that detail it is evident that on 01.07.2009 Rs. 75 lakhs and 29.03.2010 Rs. 83 lakhs was received by the assessee in cash. The assessee has not shown any reasonable cause but accepted above loan in cash and therefore, he noted that assessee has violated the provisions of section 269SS of the Act in accepting loan of Rs. 1,58,00,000/- from Asharam Bapu through Sant Lal Aggarwal therefore a penalty of Rs. 1,58,00,000/- was levied by passing order u/s 271D of the Act on 10.05.2018.

6. The assessee aggrieved with the order of the ld AO preferred appeal before the ld CIT (A). During the course of hearing of the appeal the assessee made a submission on 09.08.2019 stating that the assessee has filed appeal against the order u/s 147 read with section 143(3) of the Act and therefore, the penalty proceedings may be kept in abeyance till the conclusion of the appeal. The assessee submitted that the receipt as alleged of unaccounted money of the assessee on one side stating that the assessee has obtained accommodation entry and on other side the assessee has accepted loan in cash are contradictory in nature. It was further stated that Shri Sant Lal Aggarwal has also given cash loan to the assessee in his statement dated 19.12.2018. The ld AO in absence of any definite material has alleged that the assessee has violated provision of section 269SS of the Act.
7. The ld CIT(A) noted that after that he issued four different notices to the old authorized representative which were not replied and no attendance was made except seeking adjournment. He further noted that after the change of advocate he issued requests for hearing which was only responded to by

seeking either adjournment or non attendance. Therefore, he in absence of any attendance of the ld AR confirmed the levy of penalty of Rs. 1,58,00,000/- u/s 271D of the Act on the basis of the material available. On the merits he held that there is definite evidence available from the seized material from the premises of Asharam Bapu , Sant Lal Aggarwal of acceptance of loan in cash. He further noted through Devi Das in his deposition on oath has admitted that a cash loan of Rs. 200 crores was distributed by Ashraram Bapu through Sant Lal Aggarwal and the assessee is one of the beneficiary. He further held that the ld CIT(A) has confirmed the addition in appeal against the order passed u/s 147 read with section 143(3) vide order dated 19.11.2019 which clearly shows that name of the appellant is there in the seized material. He therefore, held that the facts of loan have received in cash of Rs. 75 lakhs and Rs. 83 lakhs on 01.07.2009 and 23.03.2010 by the appellant is evident from the seized material. Further, the statement of a close aide of Asharam Bapu is also available. He therefore, held that such vital evidence cannot be ignored. Thus, in absence of anything submitted by the AR he held that he does not have any other option except to uphold the penalty. Thus, the order of the ld AO passed u/s 271D was confirmed and appeal of the assessee is dismissed. Therefore, the assessee is aggrieved with that order has preferred this appeal before us.

8. The ld AR submitted a paper book containing 184 pages before us. He submitted that the assessment order passed u/s 143(3) read with section 147 of the Act which was confirmed by the ld CIT(A) was contested before the coordinate bench in ITA No. 9890/Del/2019 and the same was decided on 16.06.2020, same is placed at page No. 155 to 170 of the paper book. He submitted that the coordinate bench has deleted the addition. He referred to paragraph No. 7 of that order wherein, in a table entry dated 01.07.2009 in the name of the assessee of Rs. 75 lakhs and entry dated 29.03.2010 of Rs. 83 lakhs was mentioned which was alleged by the ld AO to be cash loan given to the assessee. He further stated that the penalty is levied with respect to these entries. He referred to para 25 of that order dealing with the addition of Rs. 1,55,16,090/- made on the basis of the statement of Shree Devi Das. He further stated that para 28 the coordinate bench has held that here is no direct evidence brought on record which could suggest that same

cash transaction took place between the assessee and searched person. He therefore, submitted that the addition itself is related of cash loan which the assessee denied since beginning and now confirmed by the coordinate bench that there is no cash transaction between the assessee and the alleged parties. Therefore, there cannot be any reason to levy any penalty on such alleged cash loans. He therefore submitted that the issue is squarely covered by the decision of the coordinate bench in assessee's own case for the same assessment year in quantum appeal.

9. The Id DR vehemently supported the orders of the lower authorities.
10. We have carefully considered the rival contentions and also perused the orders of the lower authorities. We have also perused the orders of the coordinate bench in case of the assessee in ITA No. 9890/Del/2019 for Assessment Year 2010-11 dated 16.06.2020. This order of the coordinate bench deals with the merits of the addition as under :-

“25. Coming to the merits of addition of Rs. 1,55,16,090/-, once again, the entire addition revolves around the statement of Shri Devi Das Tikamdas Chattani. In his statement, Shri Devi Das Tikamdas 13 Chattani stated that Shri Sant Lal Aggarwal is handler and is the main person for disbursing cash loan to 60 parties. The alleged cash loans given to the assessee is already exhibited elsewhere at para 7 hereinabove.

26. As mentioned elsewhere, the foundation of the impugned addition is the statement of Shri Devi Das Tikamdas Chattani. Except for that, there is no direct evidence brought on record to show that any cash transactions took place between the assessee and the said person.

27. On the contrary, the statement of Shri Sant Lal Aggarwal which is part of the assessment order and is extracted at pages 17 to 24 of the assessment order shows that Shri Sant Lal Aggarwal, answering to question No. 13, emphatically stated that he does not know who Shri Devi Das Tikamdas Chattani is. Once again, answering to question No. 18, Shri Sant Lal Aggarwal stated that he does not know who is Shri Devi Das Tikamdas Chattani. Answering to question No. 19, Shri Sant Lal

Aggarwal stated that he does not know Shri Devi Das Tikamdas Chattani and never handled Rs. 200 crores and no such transaction was done by him except selling rice to the Ashram. In the very same 14 statement, Shri Sant Lal Aggarwal accepted the transaction of M/s Index Securities and Research Pvt Ltd and the appellant company.

28. The Assessing Officer never confronted Shri Devi Das Tikamdas Chattani to Shri Sant Lal Aggarwal. If the statement of Shri Devi Das Tikamdas Chattani is to be believed, then on the same facts, statement of Shri Sant Lal Aggarwal cannot be ignored or brushed aside lightly. Merely because the statement of Shri Sant Lal goes in favour of the assessee, cannot be a reason to disbelieve the same. As mentioned elsewhere, there is no direct evidence brought on record which could suggest that some cash transactions took place between the assessee and the searched person. The observations made by the Assessing Officer at page 25 of the assessment order clearly show that the entire addition has been made on surmises and conjectures. The relevant para of the assessment order reads as under:

“From above it is clear that M/s. Shagun Jewellers has had transactions with M/s Index Securities & Research Pvt Ltd which was a conduit company managed by Mr.Santlal Aggarwal who has further acted on behalf of Sh. Asharam Bapu. Hence, it cannot be ruled out that cash loan were received by the assessee from Santlal Aggarwal. Moreover, the seized material retrieved , clearly indicates that the assessee company has paid Rs. 1,55,16,090/- in cash on account of interest on such cash loan.”

29. Considering the facts of the case in hand, in the light of statement of Shri Sant Lal Aggarwal, we do not find any merit in the impugned addition and the same is directed to be deleted. Accordingly, Ground Nos. 4 and 5 are allowed.”

11. On careful perusal of the order of the coordinate bench in assessee's own case for same assessment year on same subject matter as stated above wherein it has been held that there is no cash transaction entered into by the assessee with Shri Sant Lal Agarwal, the whole foundation for levy of the penalty u/s 271D has crashed. No information was placed before us by the departmental representative that the above order of the coordinate bench has been challenged or upset by the higher forum. Thus, the finding of the coordinate bench binds us. In view of the finding of the coordinate bench, we do not have any other alternative but to quash the penalty levied by the learned assessing officer and confirmed by the learned CIT – A u/s 271D of the act of Rs 1,58,000/- . Accordingly we reverse the orders of the lower authorities and allow ground number 2 of the appeal.
12. Ground number 1 and 3 are general in nature, no arguments were advanced, therefore dismissed.
13. In the result, appeal of the assessee is partly allowed.
Order pronounced in the open court on 26/07/2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 26/07/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	26.07.2021
Date on which the typed draft is placed before the dictating member	26.07.2021
Date on which the typed draft is placed before the other member	26.07.2021
Date on which the approved draft comes to the Sr. PS/ PS	26.07.2021
Date on which the fair order is placed before the dictating member for pronouncement	26.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	26.07.2021
Date on which the final order is uploaded on the website of ITAT	26.07.2021
date on which the file goes to the Bench Clerk	26.07.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	