

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SRI PRASHANT MAHARISHI, AM AND SRI PAVAN KUMAR GADALE, JM

ITA Nos. 1217 & 1218/Mum/2018

(Assessment Year 2000-01)

Triumph Securities Ltd. Radha Bhavna, 1 st Floor, 121 Nagindas Master Rd Fort, Mumbai-400 023	Vs.	Addl. Commissioner of Income Tax, Cen Cir-6 Aayakar Bhavan, M.K. Marg, Mumbai-400 020
(Appellant)		(Respondent)
PAN No. AAAC2152P		

Appellant by	:	Shri Rajiv Khandelwal, AR
Respondent by	:	Shri Dr. P Daniel, DR

Date of hearing:	15-07-2022
Date of pronouncement:	14.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are two appeals in

- a. ITA No. 1218/Mum/2018 for Assessment Year 2000-01 filed against the orders of the Commissioner of Income Tax (Appeals)-49, Mumbai [in short the learned CIT(A)] dated 29th November, 2017, wherein penalty under section 271D of Rs.12,38,75,000/- levied by the penalty order dated 30/7/2014 passed by the Additional Commissioner of Income tax – Central range -6, Mumbai [the Id. Adjudicating Authority] confirmed and

b. ITA No 1217/M/2018 for AY 2000-01 where in appellate order dated 18/12/2017 passed by the Ld. CIT [A] wherein penalty levied under section 271E of Rs.12,23,75,000/- by Id. Adjudicating authority by penalty order dated 30/7/2004 is further enhanced by Rs.22,99,17,749/- respectively.

02. Grounds in ITA No. 1217/Mum/2018 challenging penalty confirmed by the Id. CIT [A] u/s 271 E of The Act are as under: -

"The Commissioner of Income-tax (Appeals) - 49, Mumbai (hereinafter referred to as the CIT(A)) erred in confirming the penalty of ₹ 12,23,75,000 levied by the Additional Commissioner of Income-tax, Central Range 6, Mumbai (hereinafter referred to as the Addl. CIT) and further confirming the enhancement of penalty by ₹ 22,99,17,749/-, enhanced by her predecessor under section 271E of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have confirmed the action of the Addl. CIT and her predecessor in levying and enhancing the impugned penalty under section 271 E of the Act.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A), before confirming the said levy of penalty, has not followed the directions of the Tribunal in their

order dated 12th July 2006 and hence, the impugned penalty requires to be quashed.

The appellants further, submit that the observations of the CIT(A) in para 5 of her order is factually incorrect inasmuch as the case was discussed with the authorized representative of the appellants and a letter dated 18th December 2017 has been filed on even date which has also been considered by her in the impugned order."

03. Grounds in ITA No.1218/Mum/2021 confirming penalty u/s 271 D of the Act are as under: -

"1. The Commissioner of Income-tax (Appeals) - 49, Mumbai (hereinafter referred to as the CIT(A)) erred in framing an ex parte order for non-attendance on 22 November 2017.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have framed an ex parte order inasmuch as the authorized representative did attend the office of the CIT(A) on three occasions, and as the CIT(A) held dual charge, she was not in office of the appellants' charge on all the occasions.

2. The CIT(A) erred in confirming the action of the Additional Commissioner of income-tax, Central Range 6, Mumbai in levying penalty of ₹ 12,38,75,000/- under section 271 D of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law the impugned penalty is not leviable and that the CIT(A) ought not to have confirmed the same.

3. *The CIT(A) erred in enhancing the levy of penalty by ₹43,44,25,859/- under section 271D of the Act.*

The appellants contend that in the facts and in the circumstances of the case and in law, the CIT(A) ought not to have enhanced the impugned penalty as aforesaid."

04. The fact of the case shows that the assessee is a company engaged in share and stock broking, investment and trading in shares, member of the Bombay Stock Exchange, who filed its return of income on 9th October 2000 disclosing the income of Rs.6,88,48,954/-. The Return was picked up for scrutiny. Looking at the complexity in the accounts of the assessee, audit under section 142(2A) of the income-tax Act, 1961 (hereinafter referred to as 'Act') was ordered and got conducted. The assessee was then assessed under section 143(3) of the Act on 5th November 2003, wherein the income of the assessee was determined at Rs.8,48,33,150/-.
05. As the accounts of the assessee were audited under section 142(2A) of the Act, the audit report indicated that assessee has accepted Rs. 15,25,000/- from M/s BB Roongta & Company and Rs. 12,23,50,000/- from M/s AB

Corporation as amount of loan, otherwise than by cheque or demand draft and therefore, there is a violation of Provision of Section 269SS of the Act. Therefore, penalty proceedings under section 271D of the Act were initiated by issuing notice by the Id. Adjudicating Authority 15/12/2003. One more notice was issued by the same authority for same office on 16/01/2004.

06. In response to the notice, assessee submitted that assessee is a non-banking financial company engaged in the business of share trading and belongs to Ketan Parekh Group. The assessee referred to the observation of the joint parliamentary committee on enquiry of stock market scam. The learned Assessing Officer after considering the explanation of the assessee held that there is no such reasonable cause. There is no explanation for transaction between sister concern and accordingly, the learned Addl. Commissioner of Income Tax, Central Range-6, Mumbai passed an order under section 271D of the Income-tax Act, 1961 on 30th July 2004 levying a penalty of Rs.12,38,75,000/-.
07. Similarly, as the above loans have been repaid by the assessee to M/s BB Roongta & Company of Rs.25,000/- to M/s AB Corporation of Rs.12,23,50,000/- the show cause notice under section 271E of the Act were issued on 15/12/2003 as there is a violation under the provisions of Section 269T of the Act was noticed. Later on, similar notice was issued by same adjudicating authority stating

same facts on 16/01/2004. After considering the explanation of the assessee, which was similar to the submission against the show cause notice for offence u/s 269 SS of the Act, the Addl. Commissioner of Income-tax, Central Circle, Mumbai levied the penalty under section 271E of the Act of Rs.12,23,75,000/- by passing a separate order on 30th July 2004.

08. Both these orders were challenged before the learned CIT(A) and subsequently before the co-ordinate Benches. The co-ordinate Bench set aside the matter back to the file of the learned CIT(A). The learned CIT(A) passed an order on 18th December 2017 confirmed the levy of penalty under section 271E of the Act and further enhanced by the learned CIT(A) of Rs.22,99,17,749/-. Therefore, now, this is the appeal before the co-ordinate bench in the second round of proceedings.
09. Similarly, against the order passed by the learned Addl. Commission of Income Tax under section 271D of the Act, the assessee preferred the appeal before the learned CIT(A) who also enhanced the penalty of Rs.43,44,28,859/- and the total penalty levied was of Rs.55,83,03,859/-.
010. The appeal was filed before the ITAT, wherein ITAT restore the matter back to the file of the learned CIT(A) who passed an order confirming the penalty levied by the Assessing Officer and enhanced by the learned CIT(A) by

order dated 29th November 2017. Therefore, against both these above orders, now assessee is in appeal before us.

011. At the beginning of the hearing, it was found that the appeals are delayed. In case of the appeal under section 271D of the Act, the appeal requires to be filed on or before 16th February 2018. But it is filed on 1st March 2018 and therefore there is a delay of 12 days. The assessee has submitted an application for condonation of the above appeal along with affidavit.

012. The main reason stated by the assessee is that the director of the assessee company Shri Dhiren Bhatia who was busy in attending certain statutory matters of SEBI and due to this pre-occupation, he forgot to send the orders to the chartered accountant and due to this the appeal was filed late. Immediately, on noticing of the above on 28th February 2018, the orders were sent to the chartered accountant and appeals were filed on 1st March 2018. It was stated that this is a fresh reason for condonation of delay. The learned Authorized Representative reiterated the same facts.

013. The learned Departmental Representative vehemently objected the same.

014. As we find that the delay is minimal and further there is sufficient cause in not filing the appeal in time. In the interest of justice, we condone the delay.

015. The learned Authorized Representative first submitted that assessee has filed the additional ground of appeal stating that the order of penalty dated 30th July 2004 are bad in law in as much as the same is passed beyond the time limit prescribed under section 275(1)(c) of the Act. The learned Authorized Representative submitted that this additional ground of appeal goes to the root of the matter legal in nature and no fresh facts are required to be investigated, therefore the same may be admitted.
016. The learned Departmental Representative vehemently opposed the additional ground and submitted that now in the second round of appeal before ITAT, the above ground cannot be raised.
017. We have carefully considered the rival contentions and find that the ground raised by the assessee is jurisdictional ground which can be raised in time during pendency of appeal. Further, this ground goes to the root of the matter and does not require any further verification of facts. Therefore, we admit the same.
018. The learned Authorized Representative specifically argued that in the present case, assessment passed under section 143(3) of the Act on 5th November 2003 and notice under section 271E of the Act was issued on 15th December 2003 and penalty is imposed on 30th July 2004. He referred to the provisions of section 275(1)(c) of the Act and submitted that imposition of penalty was taken on 5th

November 2003 and therefore, the penalty could not have been levied later of 30th June 2004. He submitted that as penalty is levied on 30th July 2004 it is barred by limitation and therefore, it should be quashed. For this proposition, he relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Mahesh Wood Products (P.) Ltd. [2017] 394 ITR 312 (Delhi), Pr. Commissioner of Income Tax Vs. JKD capital and Finlease Limited 378 ITR 640.

019. Similarly, first show cause notice u/s 271D was issued on 15/12/2003 and penalty was levied by order dated 30/7/2004.
020. On the merits of the penalty levied under section 271D and 271E of the Act, he submitted that learned Addl. Commissioner of Income tax has misread the headings of the tax audit reports clause. He submitted that the Addl. CIT has considered all the loans accepted and repaid whether in violation of provision of section 269SS or 269T of the Act, he has levied penalty. He specifically referred to the copies of the account of M/s BB Roongta & Company and M/s AB corporation to show that the loans are received and repaid through banking channels and therefore there is no violation of provisions of section 269SS or 269T of the Act.
021. With respect to the enhancement of penalty of Rs.43,44,28,859/- in violation of the provision of section 269SS of the Act, he submitted that these are the journal

entries passed by way of transfer of debtors from Triumph International Finance India Ltd. on which the penalty is levied. The assessee submitted that both of these companies the assessee as well as Triumph International Finance India Ltd are sister concerns and journal entries are passed for transfer to and from this account. He submitted that the assessee company is member of two different exchanges. With respect to the client who trades in both exchanges their accounts are net off by passing journal entry and on which it was held that it is a loan accepted or repaid in violation of provision of section 269SS and 269T of the Act. He submitted that on journal entries no penalty can be levied, for this proposition he relied on the decision of Hon'ble Bombay High Court in the case of 92 taxmann.com 229.

022. The learned Departmental Representative Dr. P Daniel referred to the background of the case stating that the assessee belongs to Ketan Parekh group which was involved in stock market scam. He stated that because of the complexities in accounts the assessment was completed after getting accounts audited under section 142(2)(a) of the Act. During assessment proceedings, the fault under section 269SS and 269T of the Act was noted. He submitted that the learned CIT(A) confirmed the penalties in the first round as well as in the second round of appeal. He supported both the orders of the learned Assessing Officer and Commissioner of Income Tax (Appeals). He even otherwise submitted that the assessee

has not shown any reasonable cause and therefore penalty under section 271D and 271E of the Act were levied. He further submitted that there is no exemption with respect to the transaction of the group concern. In view of this he submitted that the penalty levied by the Assessing Officer and enhanced by the learned CIT(A) deserves to be confirmed.

023. The learned Departmental Representative with respect to the argument of the learned Authorized Representative that orders passed are not within the time limit, he submitted that orders are passed within six months of the time period allowed under section 275 of the Act. He submitted that notice under section 271D and 271E of the Act read with section 274 of the Act were issued on 16th January 2004 and the respective penalties were levied on or before 30th July 2004 there is no infirmity, and the penalties orders are within time.
024. The learned Authorized Representative submitted that identical issue is decided in case of assessee by co-ordinate Bench for Assessment Year 2000-01, where the penalty levied under section 271E and 271D of the Act were deleted, therefore, the issue is squarely covered in favour of the assessee.
025. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the assessment order under section 143(3) of the

Act was passed on 05.11.2003. The learned Addl. Commissioner of income-tax on 15.11.2003 issued notice under section 274 read with section 271D of the Act stating that assessee has violated provisions of section 269SS of the Act therefore, from this date the action for imposition of penalty were initiated. According to the Provisions of section 275(1)(c) of the Act, the penalty orders should have been passed on or before 30th June 2004, however, the impugned penalty orders were passed on 30th July 2004. However, we also find that on 16th January 2004, the learned Addl. Commissioner of Income-tax once again issued notice under section 274 read with section 271D of the Act. Therefore, as per revenue, the action for imposition of penalty was taken on 16.01.2004 and the penalty should have been levied within 6 months from the end of the month i.e., January 2004. Accordingly, the penalty should have been levied by 31st July 2004. The impugned penalty has been levied on 30th July 2004 accordingly after the notice dated 16th January 2004 is considered as the date of initiation of penalty, the penalty orders passed are within time. The Hon'ble Delhi High Court in case of Pr. Commissioner of Income-tax Vs. Mahesh Wood Products (P.) Ltd. [2017] 394 ITR 312 (Delhi) has held that limitation for levy of penalty under section 271D and 271E of the Act would begin to run from the date on which The learned Assessing Officer wrote a letter to the Addl. Commissioner income-tax recommending issue of show cause notice for initiating

penalty proceedings. The Hon'ble Delhi High Court following its own decision in Pr. CIT vs. JKD and finlease Ltd 378 ITR 614 has held that the orders passed under section 271D and 271E of the Act would be barred by limitation if they were passed beyond six months from the end of the month in which the learned Assessing Officer informed the learned Addl. CIT about the offence and to show cause the notice under section 274 of the Act. Apparently in this case, the first notice was issued on 15.12.2013 and second notice was issued on 16.01.2004 are identical. Therefore, from the date of notice dated 15.12.2003, the penalty order should have been passed on or before 30th June 2004 but were passed on 30th July 2004. Therefore, both the orders of the penalty are barred by limitation.

026. In this case, Id. Adjudicating authority once again issued the same notice for the same offence being show cause notice for levy of penalty u/s 271D and 271E of the act on 16/1/2004. Claim of revenue is that the last notice [second notice] issued by the Id. Adjudicating authority should be considered for computing outer time limit for passing penalty orders. If the subsequent notices issued by the Id. Adjudicating authorities on 16/01/2004 are taken for computing time limit, the Id. Adjudicating authority would always be in a positing extend the above time limit for issuing a fresh notice for the same offence and it would not be in consonance of letter and spirit of the law. Therefore, same is rejected.



027. Accordingly, following the decision of the Hon'ble Delhi High Court, in case of JKD Fin lease services limited, we hold that both the penalty orders passed on 30/7/2004 are barred by limitation of time and therefore quashed.

028. Accordingly, both the appeals filed by the assessee are allowed.

029. As the appeal of the assessee are allowed on additional ground, the issue of reasonable cause and levy of penalty on merits are not at all adjudicated.

030. In the result both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 14.10.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 14.10.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai