

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.1080 & 1076/M/2013
Assessment Years: 2007-08 & 2008-09**

Smt. Parin K. Rajwani, Makker & Co., Shop No.9, Shamji Morarji Building, Champsi Bhimji Road, Mazgaon, Mumbai – 400 010 PAN: ADHPR 1786L	Vs.	JCIT, Range 19(3), Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jitendra Singh, A.R. & Ms. Neha Paranjpe, A.R.
Revenue by : Shri Premanand. J, D.R.

Date of Hearing : 07.04.2015

Date of Pronouncement : 30.06.2015

ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeals relating to two different assessment years have been preferred by the assessee against the common order dated 07.01.2013 of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] agitating the confirmation of the penalty levied u/s 271D of the income Tax Act. First we take up the assessee's appeal for A.Y. 2008-09

ITA No.1076/M/2013 for A.Y. 2008-09

2. The assessee in this appeal has taken an additional ground that the penalty order is barred by limitation. At the outset, the Ld. AR of the assessee has submitted that the penalty order dated 08.06.2011 of the Assessing Officer (hereinafter referred to as the AO) is barred by limitation as provided under

section 275(1) (c) of the Income Tax Act. The relevant part of the section 275(1), for the sake of convenience is reproduced as under:

“Bar of limitation for imposing penalties.

- 275** (1) No order imposing a penalty under this Chapter shall be passed-
- (a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal to the Appellate Tribunal under section 253, 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 the order of 4 the Deputy Commissioner (Appeals) or] the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later;
 - (b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is 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.”**

(emphasis supplied)

3. Now coming to the relevant dates of this case, the original assessment order had been passed on 30.11. 2010 on which date the AO proposed to initiate penalty proceedings u/s 271D had been initiated. The notice u/s 271(D) was also issued on the said date. The penalty order u/s 271D has been passed on 08.06.2011. The relevant financial year during which the assessment order was completed ends on 31.03.2011. The period of six months from the end of the month in which the action for initiation of penalty proceedings expires on 30.05. 2011. The Hon’ble Rajasthan High Court in the case of ‘CIT vs. Jitendra Singh Rathore [2013] 352 ITR 327 has held that the six month period for the purpose of clause (c) of section 275(1) of the Act is to be computed from the date of issue of first show cause notice by the AO and not from the

date of issue of first show cause notice issued by the Joint Commissioner. In the light of the above decision, the order dated 08.06.2011 is hit by the bar of limitation as prescribed in clause(c) of section 275(1) of the Act and the same is accordingly set aside. This appeal of the assessee is, therefore, allowed.

ITA No.1080/M/2013 for A.Y. 2007-08

4. The Ld. AR has fairly admitted, that the penalty order in this appeal has been passed within the period of limitation as prescribed under the provisions of the Act. So the additional Ground pleading that the penalty order being barred by limitation is hereby dismissed.

5. Now coming to the merits of the case, the assessing officer during the course of assessment proceedings for the A.y.2008-09 came to knowledge of the fact that the assessee had received cash loan of Rs.40,000/- in the Financial Year 2006-07 relevant to AY 2007-08. Consequent to the reference made by the Assessing officer, notice was issued to the assessee u/s 271D read with section 269SS of the Act. In response, the assessee explained that he was not aware of the provisions of law in this respect. The AO held that the ignorance of law can not be a ground for breach of law. He therefore levied penalty u/s 271D of the Act amounting to Rs.40,000/- i.e. the amount equal to the amount of cash loan accepted by the assessee.

6. In appeal before the CIT(A), the assessee submitted that the assessee was not aware of the provisions of the Act requiring the receipt of loan through cheque or bank draft. She further submitted that the loan of Rs.40,000/- had been taken for the very purpose of deposit of the same in the bank. The Id. CIT(A) however did not agree with the contention of the assessee, hence, confirmed the penalty.

7. Before us, the Ld. AR of the assessee has explained that the assessee lady has been engaged in the profession of tailoring. She had no intention to contravene the provisions of the Act. In fact, after receipt of loan from her daughter in law, a very close relative, she had deposited the amount in bank. Both the ladies were unaware of the provisions of law in this respect. Considering the status of the assessee being a small time tailor, her gross total Income mainly from tailoring and interest income for A.Y. 2008-09 only Rs.158282/- , the total income in relation to which was returned and assessed at Rs. 150280/- and there being no intention to breach the provisions of law while accepting loan of Rs. 40,000/- from her daughter in law, we do not find it a fit case for levy of penalty u/s 271D of the Act. The same is accordingly ordered to be deleted. This appeal of the assessee is accordingly allowed.

8. In the result, both the appeals of the assessee are hereby allowed.

Order pronounced in the open court on 30.06.2015.

Sd/-
(Sanjay Arora)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 30.06.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.