

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos.161 & 162/Del/2018  
(Assessment Years : 2007-08 & 2008-09)

Devendra Sharad Kumar Damle C-70, 1 <sup>st</sup> Floor, Inderpuri, Delhi-110012  PAN : AEQPD 4446 R <b>(APPELLANT)</b>	Vs.	JCIT Range – 61, New Delhi  <b>(RESPONDENT)</b>
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Assessee by	--None--
Revenue by	Shri Mahesh Thakur, Sr. D.R.

Date of hearing:	26.07.2021
Date of Pronouncement:	28.07.2021

**ORDER**

**PER ANIL CHATURVEDI, AM :**

These two appeals are against the order of confirming the penalty u/s 271D of Rs. 14 lac. for Assessment Years 2007-08 & 2008-09.

2. The case file reveals that there was no appearance on behalf of the assessee. Even on the date of hearing, none appeared on

behalf of the assessee nor any adjournment application was filed. In the absence of any representative from the side of assessee, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing by the Learned DR.

3. Before us, at the outset, Learned DR submitted that the issue involved in both the appeals are identical. In view of the aforesaid submission of Learned DR, we for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2007-08 in ITA No.161/Del/2018.

4. The relevant facts as culled from the material on records are as under :

5. AO has noted that assessee has treated to have received Rs.14 lac in A.Y. 2007-08 & 2008-09 in cash from Mrs. Chetna Verma. He was of the view that as per the provision of Section 269SS of the Act no person shall take or accept any loan or deposit or any specified sum, in excess of the limits prescribed in the provision in cash and if a person takes or accepts any loan or deposit in contravention of the provisions of Section 269SS of the Act, he shall be liable to pay penalty u/s 271D of the Act. He noted that since assessee had accepted loan/ deposit of Rs.28 lac (Rs.14 lac in A.Y. 2007-08 and Rs. 14 lac in A.Y. 2008-09 in cash), he was liable for penalty u/s 271D r.w.s 269SS of the Act.

He accordingly vide order passed u/s 271D r.w.s 269SS of the Act dated 29.09.2016 levied the penalty of Rs.14 lac for both the assessment years. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 10.11.2017 (Appeal Nos.10493/2016-17 & 10494/2016-17) respectively, dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds:

- “1. *On the facts and circumstances of the case and in law, the order passed by the Commissioner of Income Tax (Appeal) is bad in law.*
2. *On the facts and circumstances of the case and in law, the CIT(A) erred in passing order without providing proper opportunity of hearing.*
3. *On the facts and circumstances of the case and in law the CIT(A) erred in not adjudicating the various grounds of appeal on merit.*
4. *On the facts and circumstances of the case and in law, the penalty order passed by the assessing officer was bad in law, without jurisdiction and barred by limitation and CIT(A) erred in not holding so.*
5. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming penalty of Rs. 14 lac imposed by the assessing Officer u/s 271D of the Income Tax Act, 1961.*

*The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.*

*The aforesaid grounds of appeal were without prejudice to each other.”*

6. Before us, Learned DR submitted that since assessee taken loan in cash, AO was justified in levying the penalty u/s 271D of the Act and CIT(A) has rightly confirmed the action of AO. He thus supported the order of CIT(A).

7. We have heard the Learned DR and perused the materials available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned orders of CIT(A) dated 10.11.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the grounds in both the assessee's appeals are allowed for statistical purposes.**

**8. In the result, both the appeals of the assessee are allowed for statistical purposes.**

**Order pronounced in the open court on 28.07.2021**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

*Date:- 28.07.2021*  
PY\*

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI