

IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JM AND SHRI N.K. PRADHAN, AM

आयकरअपीलसं./I.T.A. No.945/Mum/2015

(निर्धारणवर्ष / Assessment Year:2010-11)

M/s. Jaikrishna D Pathak, Punit yarn Agency, 17/23 Amini mansion, Kolsa Mohalla Nakhoda Street, Mumbai-400 009.	बनाम/ Vs.	CIT (A) 24, Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AGNPP3108K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. Bhuvaneshwari Shankar
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri. Rajesh Ojha

सुनवाईकीतारीख/ Date of Hearing	:	20/10/2016
घोषणाकीतारीख / Date of Pronouncement	:	12/01/2017

आदेश / ORDER

C.N. PRASAD, JM:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-26, Mumbai dated 31/10/2014 for the assessment order 2009-2010 arising out of the penalty order passed u/s 271E of the Income Tax Act.

2. Briefly stated the facts are that assessee is engaged in the business of yarn trading, acting as broker and commission agent in the name of Punit Yarn Agency. The Assessing Officer in the course of assessment proceedings noticed that assessee has re-paid loan of Rs. 4,84,000/- and out of this an amount of Rs. 2,05,000/- was re-paid in cash. Therefore, the Assessing Officer initiated penalty proceedings u/s 271E of the Act. In the course of the penalty proceedings the assessee contended that he has paid Rs.2,05,000/- to his wife Smt. Vijaya Pathak on 2.3.2009 from out of cash balance available in his proprietary concern namely M/s Punit Yarn Agency. It was contended that this fact was brought to the Assessing Officer in the course of assessment proceedings and therefore it is not the case of undisclosed income finding it's way through loan or deposit as envisaged in the provision of section 269SS and 269T of the Act. It was also contended that the amount was paid by the assessee to his wife to enable her to clear her personal obligation on urgent basis. It was also contended that the assessee was under *bona fide* belief that the provisions of Sec. 269T have no application to the funds made available to his wife under family expediency. However, Assessing Officer rejected the contention of the assessee and passed order u/s 271E levying penalty of Rs. 2,05,000/- for the contravention of the provisions of Sec. 269T of the Act.

3. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) sustained the penalty levied by the Assessing Officer holding that the contention of the assessee that he has re-paid the loan to his wife in cash to meet the personal outstanding debts of his wife is not an emergency situation without going through the banking channels. He also held that the reasons given by the assessee for repayment of amount in cash is not found to be a reasonable cause. Therefore, the Commissioner of Income Tax (Appeals) upheld the order the Assessing Officer in levying penalty.

4. The learned counsel for the assessee submits that the assessee has repaid the amount in cash to his wife to meet her financial obligations, i.e., to clear her debts on an emergency situation. The learned counsel for the assessee submits that the transaction is genuine and there is reasonable cause in re-paying amount in cash to his wife. The learned counsel for the assessee placing reliance on the order of the Pune Bench of the Tribunal in the case of *M/s Deepali Mandar Joshi Vs. Addl. CIT in ITA No. 2091-2092/PN/2014 dated 31/08/2016*, submits that transaction is genuine and is between close family members. Provisions of Sec. 269SS and 269T are not attracted to such a transaction. Therefore, he submits that there is no justification in levying penalty u/s 271E of the Act.

5. On the other hand, the learned Departmental Representative submits that there is no reasonable cause in re-payment the loan in cash by the assessee to his wife and therefore the authorities below are justified in imposing penalty u/s 271E of the Act.

6. We have heard the rival submissions, perused the orders of the authorities below and the case law relied on. In this case penalty was levied u/s 271E of the Act on the amount re-paid by the assessee to his wife for the contravention of the provision of Sec. 269T, by the Addl. Commissioner of Income Tax, Range-13(1), Mumbai. The Assessing Officer in the course of assessment proceedings noticed that assessee has re-paid loan to his wife partly in cheque and partly in cash and, therefore, he initiated penalty proceedings u/s 271E for the contravention of provision of Sec. 269T of the Act on the re-payment of loan in cash. Assessee contended that he has re-paid this amount to his wife from out of cash balance available with his proprietary concern M/s Punit Yarn Agency which is doing business in trading of yarn brokerage and commission agency. Assessee contended that this amount is not undisclosed money finding its way through loan or deposit as envisaged in provisions of Sec. 269SS and 269T of the Act. It was further contended that since this amount was paid

by the assessee to his wife to enable her to clear her personal obligations on an urgent basis, the assessee was under *bona fide* belief that the provision of Sec. 269T are not attracted to funds made available to his wife as the transaction is between husband and wife only. It was also contended that there is reasonable cause in repaying the loan by the assessee to his wife.

7. However, the authorities below rejected this contention of the assessee and penalty was sustained. We have noted that the transactions in this is not cause of paying transactions between assessee of his wife the amount was not undisclosed but it was generated by the assessee in his business which had already suffered tax. The contention of the assessee that since the transaction was between himself and his wife he was under the *bona fide* impression that provisions of Sec. 269T are not attracted cannot be brushed aside. We also find reasonable cause in payment of the amount in cash by the assessee to his wife as this amount was to be utilized for discharging her debts on an emergency basis.

8. The Pune Bench of Tribunal in the case of *M/s Deepali Mandar Joshi* considered the situation where assessee has taken loan and repaid the loan from his mother-in-law and the Tribunal deleted the penalty observing as under :-

“16. We have considered the rival arguments made by both the sides, perused the orders of the AO, Addl.CIT and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Addl.CIT in the instant case has levied penalty of Rs.1,75,000/- u/s.271D and Rs.2,35,000/- u/s.271E for violation of the provisions of section 269SS and 269T respectively. We find in appeal the Ld.CIT(A) upheld the action of the Addl.CIT in levying the penalty u/s.271D and 271E. It is the submission of the Ld. Counsel for the assessee that the assessee has taken the money in cash from her husband and mother-in-law due to business exigency and has repaid the same in cash. The assessee was under a bonafide belief that taking money in cash and repaying thereof in cash from the husband and mother-in-law is not in violation of provisions of section 269SS and 269T. The genuineness of the transactions have not been doubted by the revenue authorities and therefore there was a reasonable cause within the meaning of section 273B.

Therefore, no penalty is leviable u/s.271D and 271E for violation of the provisions of section 269SS and 269T respectively.

17. We find some force in the above arguments advanced by the Ld. counsel for the assessee. Admittedly, the transactions are between close family members. The assessee has accepted loans in cash from her husband and mother-in-law and has repaid the same in cash. The genuineness of the transactions has not been doubted. We find the Hon'ble Punjab & Haryana High Court in the case of Sunil Kumar Goel (Supra) while deciding an identical issue has observed as under :

“10. We have considered the submission advanced by the learned counsel for the respondent-assessee. We are satisfied that section 273B of the Act envisages a non-obstante clause as against sections 271D and 271E of the Act (which have been sought to be invoked for penalising the respondent- assessee). In the exceptional situation envisaged in section 273B of the Act, it is permissible for an assessee to substantiate “reasonable cause” for his failure to comply with the provisions on the basis whereof, penalty is sought to be imposed upon him. Taken to the logical conclusion in so far as the present controversy is concerned, it is open to the respondent-assessee, in the present case, to establish a reasonable cause for having not complied with the provisions of section 269SS of the Act (in the case of I. T. A. No. 777 of 2008) and section 269T of the Act (in the case of I. T. A. No. 778 of 2008). If an assessee successfully discharges the aforesaid obligations, then it is open to him to raise a claim that he should be excused from the consequential penal effect.

11. The explanation tendered by the respondent-assessee which has been taken into consideration by the Income-tax Appellate Tribunal was that the action of the respondent-assessee was bona fide and not aimed at avoiding any tax liability. So far as the instant issue is concerned, the Income-tax Appellate Tribunal arrived at the conclusion that the action of the respondent-assessee had not resulted in the infraction of any law, inasmuch as, the default committed by him was technical and venial in nature. The Income-tax Appellate Tribunal also expressed the view that no prejudice was caused to the Revenue, inasmuch as, there was no avoidance of tax or tax evasion at the hands of the respondent-assessee. Relying upon the judgment rendered by this court in CIT v. Saini Medical Store [2005] 277 ITR 420 that bona fides and genuineness of the transaction would constitute a “reasonable cause” for not invoking the provisions of sections 271D and 271E of the Act, the Income-tax Appellate Tribunal arrived at the conclusion that the respondent-assessee has been successful to show “reasonable cause”. And accordingly the Income-tax Appellate Tribunal returned a finding that acceptance of the return of payments received by the respondent-assessee, by way of cash, at the hands of the respondent- assessee, ought to be overlooked, in the facts and circumstances of this case.

12. As against the aforesaid conclusion drawn by the Income-tax Appellate Tribunal, it was submitted by the learned counsel for the appellant- Revenue, that

on eight different occasions different amounts ranging from Rs. 10,000 to 30,000 were taken by way of cash by the respondent-assessee as loans in conscious and deliberate disregard of obligation envisaged under section 269SS of the Act. And the aforesaid loans were then returned by way of cash, again, in conscious disregard of the obligation envisaged under section 269T of the Act. It was also submitted by the learned counsel for the appellant-Revenue, that it had not been argued at the hands of the respondent-assessee, that action of the respondent-assessee was not deliberate, or that, the same was under a bona fide belief that he could not accept or return a loan(s) in excess of Rs. 20,000 by way of cash. It is, therefore, the submission of the learned counsel for the appellant-Revenue, that the onus to establish bona fides at the hands of the respondent-assessee, squarely rests on the shoulder of the respondent- assessee. In addition to the above, it is submitted that a breach of the provisions of the Act, cannot be justified on the alleged bona fide belief, which cannot be illustrated through cogent evidence. It is, therefore, the submission of the learned counsel for the appellant-Revenue, that in the facts and circumstances of the present case, the respondent-assessee, could not be deemed to have established a reasonable cause for not abiding by the provisions of sections 269SS and 269T of the Act.

13. *Having given our thoughtful consideration to the submissions advanced by the learned counsel for the rival parties, we are of the view that the finding that there was reasonable cause shown by the respondent-assessee, is a finding of fact. This emerges from the decision rendered by this court in Saini Medical Store's case [2005] 277 ITR 420, wherein, this court has, inter alia, held as under (page 425) :*

"As pointed out earlier, there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment made for the year under consideration. Even if, there is any ignorance, which resulted in the infraction of law, the default is technical and venial which did not prejudice the interests of the Revenue as no tax avoidance or tax evasion was involved. To my mind, bonafide belief coupled with the genuineness of the transactions would constitute reasonable cause under section 273B for not invoking the provisions of section 271E of the Act. The impugned order of penalty is cancelled.

The findings of the Commissioner of Income-tax (Appeals) have been confirmed in appeal by the Tribunal.

Therefore, the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal that the assessee had shown reasonable cause for the failure to comply with the provisions of section 269T of the Act is a finding of fact based on appreciation of material on record. It does not give rise to any question of law, much less substantial question of law. Accordingly, the appeal is dismissed."

14. *The Income-tax Appellate Tribunal was right in recording its conclusion that a " reasonable cause" had been shown by the respondent-assessee. The*

Income-tax Appellate Tribunal relied on the fact that the respondent- assessee had produced his cash books, depicting loans taken by him unilaterally before the Revenue. Another fact taken into consideration was that no prejudice was caused to the Revenue in the instant action of the respondent-assessee inasmuch as the respondent-assessee did not attempt by the impugned act to avoid any tax liability. Furthermore, there is no dispute about the fact that the instant cash transactions of the respondent- assessee were with the sister concern and that these transactions were between the family and due to business exigency. A family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof is contained in the compilation of accounts and which has no tax effect, in our view establishes "reasonable cause" under section 273B of the Act. Since the respondent-assessee had satisfactorily established "reasonable cause" under section 273B of the Act he must be deemed to have established sufficient cause for not invoking the penal provisions (sections 271D and 271E of the Act) against him.

15. *For the reasons recorded hereinabove, we find no merit in either of the aforesaid two appeals, i.e., I. T. A. Nos. 777 and 778 of 2008, and accordingly, the said appeals are hereby dismissed."*

18. *We find the Hon'ble Punjab & Haryana High Court in the case of Saini Medical Store (Supra) while dealing with an identical issue has observed as under :*

"10. Section 273B of the Act provides that no penalty is imposable for any failure referred to in the said provisions, if the assessee proves that there was "reasonable cause" for the said failure.

11. *Therefore, a combined reading of the provisions of sections 271E and 273B of the Act makes it clear that if the assessee shows "reasonable cause" for the failure to comply with any provision referred thereto, the penalty for its violation shall not be imposable on the assessee.*

12. *In the present case, the Commissioner of Income-tax (Appeals) while deleting the penalty in its order dated January 18, 1999, had accepted the explanation of the assessee that breach of the provisions of the Act was on account of bona fide belief of the assessee and the same was not with any intention to avoid or evade the tax. The observations of the Commissioner of Income-tax (Appeals) in paras. 6 and 6.1 are relevant and are reproduced as under :*

"6. I have carefully considered the conspectus of this matter and facts on record. No loss of revenue has occurred in this case and the genuineness of the transaction has not been doubted. The apex court in Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26 had long ago settled the law that penalty is not to be ordinarily imposed unless the party either acted deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted

in conscious disregard of its obligations. Penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. The authority competent to impose the penalty will be justified in refusing to do so, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

6.1 As pointed out earlier, there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment made for the year under consideration. Even if, there is any ignorance, which resulted in the infraction of law, the default is technical or venial which did not prejudice the interests of the Revenue as no tax avoidance or tax evasion was involved. To my mind, bona fide belief coupled with the genuineness of the transactions would constitute reasonable cause under section 273B for not invoking the provisions of section 271E of the Act. The impugned order of penalty is cancelled."

13. The findings of the Commissioner of Income-tax (Appeals) have been confirmed in appeal by the Tribunal.

14. Therefore, the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal that the assessee had shown reasonable cause for the failure to comply with the provisions of section 269T of the Act is a finding of fact based on appreciation of material on record. It does not give rise to any question of law, much less substantial question of law.

15. Accordingly, the appeal is dismissed."

19. So far as the decisions relied on by the Ld. Departmental Representative are concerned they are distinguishable and not applicable to the facts of the present case. In the case of P. Muthukaruppan (Supra) the Hon'ble High Court has upheld the penalty levied u/s.271D and 271E on the ground that assessee was taking and giving back amounts exceeding Rs.20,000/- to the money lender through cash repeatedly though entire transactions took place in major city and the assessee had neither explained as to the urgency, compulsion or any other important circumstances for breach. Similarly, in the case of Charan Dass Ashok Kumar (Supra) the Hon'ble High Court upheld the penalty levied u/s.271D on the ground that assessee failed to establish any reasonable cause in taking or accepting such loan or deposit otherwise than by account payee cheque/account payee bank draft.

20. Since in the instant case the assessee had taken cash loan from her husband and mother-in-law which has been repaid in cash and there is no repeated transactions and the assessee has explained the reasonable cause for accepting such loans and

repayment thereof in cash, therefore, in our opinion, the expression “reasonable cause” in section 273B for non imposition of penalty u/s.271D and 271E would have to be construed liberally. Accordingly we hold that penalty u/s.271D and 271E are not imposable in the facts of the present case. We, therefore, set aside the order of the CIT(A) and direct the AO to cancel the penalty. Grounds raised by the assessee are accordingly allowed.”

9. Respectfully following this decision, we hold that the present case also is not a fit case for levy of penalty u/s 271E of the Act. Thus, we delete the penalty levied u/s 271E of the Act by reversing the order of the Commissioner of Income Tax (Appeals). Grounds raised by the assessee are allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12th January, 2016.

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Sd/-

(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai Dt : 12th January, 2017

Nishant Verma Sr. PS

Copy :

1. The appellant
2. He respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, “J” Bench

By order

Asstt.Registrar, ITAT, Mumbai Benches

		Date	Initials
1.	Draft dictated on	09.01.2017	SPS
2.	Draft placed before author	11.01.2017	SPS
3.	Draft proposed & placed before the Second Member		JM
4.	Draft discussed/approved by Second Member		AM
5.	Approved Draft comes to the Sr. PS		SPS
6.	Kept for pronouncement on		SPS
7.	File sent to the Bench Clerk		SPS
8.	Date on which file goes to the Head Clerk		
9.	Date on which file goes to A.R.		
10.	Date of dispatch of order		