

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-2", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A. Nos. 6528 & 6529/DEL/2013		
A.YR. : 2009-10		
ITO, Ward-5(2), Room No. 234-B, CR Building, IP Estate, New Delhi	VS.	Smt. Kavita Behal, 49, Lajpat Nagar-III Ring Road, New Delhi (PANAAEPB271P)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by	:	Ms. Garima Jain, Sr. DR
Assessee by	:	Sh. Sanjeev Saxena & Sh. Devinder K. Jain, Cas

**Date of Hearing : 05-11-2015**

**Date of Order : 16-11-2015**

**ORDER**

Revenue has filed these Appeals against the respective impugned Orders both dated 06.9.2013 passed by the Ld. CIT(A)-V, New Delhi relevant to assessment years 2009-10. Since the issues involved in both the appeals are identical, hence, these appeals are being consolidated by this common order for the sake of convenience, by dealing with ITA No. 6528/Del/2013.

2. The following grounds have been raised in ITA No. 6528/Del/2013 (AY 2009-10) :-

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty u/s. 271D of the I.T. Act, 1961 of Rs. 27,01,600/-.*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of the appeal raised above at the time of the hearing.”*

3. The following grounds have been raised in ITA No. 6529/Del/2013 (AY 2009-10) :-

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty u/s. 271E of the I.T. Act, 1961 of Rs. 22,85,000/-.*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of the appeal raised above at the time of the hearing.”*

4. The brief facts of the case are that the assessee filed her return of income on 30.07.2009 declaring an income of Rs.1,78,400/-. The case was fixed for scrutiny and the assessment was completed on 30.12.2011 at an income of Rs. 1,78,400/-. As per A.O. assessee is maintaining the bank accounts and in these accounts numerous cash deposits totaling to Rs. 27,01,600/- have been made by the husband of the assessee Mr. Deepak Behal during the A.Y. 2009-10 on various dates. It is also seen that repayment was made in cash totaling Rs. 22,85,000/- by the assessee to her husband on various dates during the A.Y.

2009-10. Though no adverse inference of the same was drawn in the assessment order but penalty U/S 271D was initiated by learned A.O. Thereafter the AO took up the case and issued show cause notice for penalty u/s 271D and passed an ex-parte order dated 27.09.2012 u/s 271D of the Act imposing the penalty of Rs. 27,01,600/-.

5. Against the above penalty order, the Assessee appealed before the Ld. CIT(A), who vide impugned order dated 6.9.2013 has allowed the appeal of the assessee and delete the penalty in dispute.

6. Aggrieved with the Ld. CIT(A)'s Order dated 6.9.2013, Revenue is in appeal before the Tribunal.

7. Ld. DR relied upon the order of the Assessing Officer and further relied upon the decision of the Madras High Court in the case of P. Baskar vs. CIT 340 ITR 560 wherein it has been held *that except for the mere statement that the receipt of amount in cash was on account of business exigency and to meet the liquidity, there was no material to show that in fact there was a real exigency that compelled the assessee to take a cash loan. Penalty had to be levied.*

8. On the other hand, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and also relied upon the following cases laws and stated that the present case of the assessee is squarely covered by these case laws:-

- (a) Kamen Jaswantlal Shah vs. ITO {2012} 19 Taxmann.com 99 (Ahd.) - ITAT, Ahmedabad
- (b) CIT vs. Sree Krishna Promoters & Builders [2011] 16 taxmann.com 138 (Kar.) - High Court of Karnataka

- (c) CIT vs. Shivalik Loha Mills Ltd. - 2007-TIOL-75-HC-P&H-IT
- (d) CIT vs. Bangalore Leather & Leather Crafts Ltd. [2012] 19 taxmann.com 21 (Kar.)
- (e) CIT vs. Lakshmi Trust Co. [2008] 303 ITR 99 (Mad.)
- (f) CIT vs. Balaji Traders [2008] 167 Taxman 27 (Mad.)
- (g) Addl. CIT vs. BBL Foods Pvt. Ltd. 2008-TIOL-299-ITAT-HYD.
- (h) Rajendra Suryavanshi vs. ACIT [2012]taxmann.com 358 (Pune) - ITAT, Pune Bench.
- i) CIT vs. Cadbury India Ltd. [2011] 11 taxmann.com 66 Delhi - High Court of Delhi.
- (j) Branch Manager, Punjab National Bank vs. Addl. CIT [2011] 16 taxmann.com 318 (Luck.) - ITAT, Lucknow.
- (k) CIT vs. Lokhpat Film Exchange (Cinema) [ 2008] 304 ITR 172 (Raj.) - Rajasthan High Court.
- (l) DCIT vs. Akhilesh Kumar Yadav [2012] 26 taxmann.com 264 (Agra Tribunal)
- (m) Bright Play Centre vs. Addl. CIT 2011-TIOL-712-ITAT-AHM
- (n) OMEC Engineers vs. CIT [2007] 294 ITR 599 (Jhar)
- (o) CIT vs. T. Perumal (Indl.) [2015] 370 ITR 313 (Mad.)

(p) CIT vs. Speedways Rubber Pvt. Ltd. [2010] 326 ITR 31 (P&H).

9. I have heard both the parties and perused the relevant records, especially the orders of the revenue authorities as well as the case laws cited by both the parties. I find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the Ld. Counsel of the assessee and adjudicated the issue in dispute as under:-

6. *After considering nature of transactions the issue to be examined in the case under consideration whether penalty under section 271 D is leviable when assessee was having reasonable cause. I noticed that while introducing section 269SS, section 273B was also incorporated in the statute which provides that no penalty shall be imposable on a person or an assessee, as the case may be, for any failure referred to in the said provision if the assessee proves that there was a reasonable cause for such failure. In other words, penalty is not automatic under section 271D on mere violations of provisions of section 269SS. The words 'reasonable cause' have not been defined under the Act, but they could receive the same interpretation which is given to the expression 'sufficient cause'. Therefore, in the context of the penalty provisions, the words 'reasonable cause' would mean a cause which is beyond the control of the assessee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of*

*bonafides. Before imposition of penalty under these sections, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions. While considering reasonableness one should keep in mind commercial expediency and object of the section for which it was inserted. It is to see whether the transaction is in accordance with commercial expediency. If I see the facts of the case under consideration in consolidated way, I noticed that the assessee has demonstrated the funds were arranged in cash on urgent requirement of the business which is in accordance with commercial expediency of assessee's business which was being closed during the year as the remaining stock of cloth was being sold to clear the outstanding of the business by paying to outstanding creditors. I noticed that the assessee was engaged in the business of export of garments. It was submitted that in case of urgency in business, the assessee took loan from her husband each amounting below Rs. 20,000/-. The A.O. did not doubted about the genuineness of the transactions as the assessment order was passed without any adverse inference and the returned income was accepted without any additions or disallowances. From the facts of the case, we find that the assessee took small amounts of money from time to time and repaid back in small amounts was in accordance with commercial expediency of assessee's business as the demand of business of the assessee was such at that point of*

*time. The bona fide transactions of the assessee carried out in accordance with commercial expediency and business need amounts to reasonable cause and in the case of reasonable cause the penalty u/s. 271D is not leviable. It is further strengthened from the fact that AO has accepted the returned income and has not disputed the fact that these transactions are recorded in books of Alc's.*

- 7. From the material on record, there is nothing to indicate that the amount received and repayment is a loan or unaccounted for. It is entered in the accounts duly maintained by both. In fact, the purpose for which the said amount was received is also clear from the material on record and therefore there is nothing to indicate that this amount is paid as loan or deposit. In the absence of such material on record keeping in mind the relationship between the parties the nature of transaction coupled with the fact that the assessee was undergoing a financial difficulty, if. I do not see any merit in this appeal.*
- 8. I therefore, delete the penalty of Rs. 27,01,600/- levied by the AO u/s. 271D of the Act."*

10. In view of the above, I am of the view that no interference is called for in the well reasoned order passed by the Ld. CIT(A), because the Ld. CIT(A) has decided the issue in dispute in favor of the assessee after appreciating the evidence filed by the assessee as well as various decisions rendered by the Hon'ble High Courts and the decisions of the various ITAT Benches. I further find

that there is nothing to indicate that the amount received and repayment is a loan or unaccounted for. It is entered in the accounts duly maintained by both. In fact, the purpose for which the said amount was received is also clear from the material on record and therefore, there is nothing to indicate that this amount is paid as loan or deposit. I find considerable cogency in the assessee's submission that in the absence of such material on record keeping in mind the relationship between the parties the nature of transaction coupled with the fact that the assessee was undergoing a financial difficulty. I also find that the case law relied upon by the Ld. DR is based on different facts i.e. there is no material to show the real exigency to take cash loan. However, in the case laws cited by the Ld. Counsel of the assessee there was definite sufficient cause to establish the real exigency of taking the cash loans. I also find that the Ld. CIT(A) has rightly observed that assessee has demonstrated the funds were arranged in cash on urgent requirement of the business which is in accordance with commercial expediency of assessee's business which was being closed during the year as the remaining stock of cloth was being sold to clear the outstanding of the business by paying the outstanding creditors and as a result, the assessee has undergone a financial crisis, hence, Ld. CIT(A) has rightly deleted the penalty in dispute. In view of above, I find no infirmity in the impugned order

passed by the Ld. CIT(A), hence, I uphold the same by dismissing the appeal filed by the Revenue.

11. In the result, both the appeals of the Revenue stand dismissed.

Order pronounced in the Open Court on 16/11/2015.

Sd/-

[H.S. SIDHU]  
JUDICIAL MEMBER

*Date 16/11/2015*

“SRBHATNAGAR”

*Copy forwarded to: -*

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,  
ITAT, Delhi Benches