

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 392/Del/2016
(Assessment Year: 2006-07)

Manan Jain A-17/4, Ground Floor, Rana Pratap Bagh, Delhi PAN:AGIPJ6920G	Vs.	JCIT, Range-19, New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. K. C. Pahuja, Adv
Revenue by:	Sh. K. K. Jaiswal, DR
Date of Hearing	16/03/2016
Date of pronouncement	13/05/2016

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is appeal filed by the assessee against the order of the 1d CIT(A)-12, New Delhi dated 30.11.2015 for the Assessment Year 2006-07 confirming the penalty of Rs.10 lacs levied u/s 271D of the Income Tax Act.
2. The assessee has raised the following grounds of appeal:-

1. *The Ld. JCIT, Range 19, grossly erred in passing the penalty order u/s 271D of the I.T. Act, 1961 by imposing the penalty of Rs.10,00,000/-.*
 2. *That the Ld. JCIT wrongly interpreted the provisions of section 269SS of the IT. Act, 1961 read with section 273B.*
 3. *That the Penalty of Rs.10,00,000/- imposed u/s 271D of the I.T. Act, 1961 may be deleted by this Hon'ble Tribunal.”*
3. The brief fact of the case is that the assessee is an individual and has borrowed a sum of Rs.10 lacs by two separate bearer cheques of Rs.7 lacs and Rs.3 lacs from his father Shri S. C. Jain on 10.03.2006 drawn on Axis Bank Ltd. Same amount of loan was returned by the assessee to his father by a/c payee cheque on 26.03.2006. Ld JCIT levied a penalty u/s 271D of the Act amounting to Rs. 10 lacs on account of the above loan taken by the assessee from his father as the amount of loan was taken by two bearer cheques and not a/c payee cheques. Assessee submitted before the ld adjudicating authority that the transaction was within the family members and that the balance sheet of the assessee as on 31.03.2006 and an outstanding loan of Rs. 2330000/- payable to Mr. SC Jain and out of this total loan Rs.10 lacs was taken during the year. Assessee being aggrieved with the above order preferred an appeal before ld CIT (A), who in turn confirmed the penalty for the reason that the assessee has failed to bring on record any reasonable cause for accepting the loan in cash. The ld CIT (A) rejected the contention of the assessee that the assessee has obtained this loan from the father of the assessee and the loan is treated as explained. It was further submitted that the amount was taken as a 'short-term stock investment', which was the genuine business purposes of the assessee's business, and the assessee was under a belief that it is not a loan.

4. On appeal before us the assessee submitted that the loan has been taken by the assessee from his father and assessee was under bonafide believe that the 'short-term stock investment' is taken for the genuine business purposes of the assessee and it is not a loan. He further submitted that loan amount was found to be genuine and therefore the genuineness of the transactions and taking cash loan for the bonafide purpose cannot invite the penalty. He further submitted that assessee is living in a joint family with this father and brother and fully dependent on his parent. In view of this he submitted that relying on the decisions quoted at para No. 8.4 of the order of the ld CIT (A) penalty may be deleted.
5. Against this ld DR relied on the order of the lower authorities and submitted that provisions of section 269SS does not give any exemption to loan taken from relatives and therefore the penalty is correctly levied and confirmed by lower authorities.
6. We have carefully considered the rival contentions. In the present case the assessee has obtained loan from the father of the assessee for the purpose of business as short-term stock investment, this fact has not been controverted by revenue. Assessee has pleaded that he was unaware that this amount of transaction of taking fund for short-term stock investment from his father through bearer cheques will tantamount to violation of provisions of section 269SS of the Act and invite penalty u/ 271D of the Income Tax Act. We notice that while introducing section 269SS and 269 T , section 273B was also incorporated in the statute which provided that no penalty shall be imposable for any

failure referred to in the said provision if the assessee proves that there is a reasonable cause for such failure. The reasonable cause has not been defined under the act. In the plain meaning it means a cause, which prevents a reasonable man of ordinary prudence without negligence or inaction or want of bonafides. In the present case the assessee has obtained loan from his father, which was for the bonafide needs of his business and genuineness of such transactions is not in doubt. Therefore, the transaction of the assessee is carried out with commercial expediency and business need. Our view is further gets support from the decision of Hon'ble Allahabad High Court in case of CIT Vs. Dimple Yadav 379 ITR 177 (All) wherein it has been held as under:-

“10. The object of introducing section 269SS of the Act was to ensure that a taxpayer was not allowed to give false explanation for his unaccounted money or if the taxpayer made some false entries, he would not escape by giving false explanation for the same. It was found that during the search and seizure, unaccounted money was found and the taxpayer usually gave an explanation that he had borrowed or received deposits from his relatives or friends and, consequently, it became easy for the so-called lender to manipulate his record to suit the plea of the taxpayer. In order to curb this menace, section 269SS of the Act was introduced to do away with the menace of making false entries in the account books and later give an explanation for the same. Section 269SS of the Act consequently, required that no person shall take or accept any loan or deposit, if it exceeds more than Rs. 20,000 in cash.

11. Section 271D of the Act provided that a person who takes or accepts any loan or deposit in contravention of the provision of section 269SS of the Act he would be liable to pay by way of penalty a sum equal to the amount of the loan or deposit so taken or accepted.

12. Section 271D of the Act caused undue hardship to the taxpayers where they took a loan or deposit in cash exceeding Rs. 20,000 even where there was a genuine or bona fide transaction. The Legislature, accordingly, introduced section 273B of the Act, which provided that if there was a genuine and bona fide transaction and the taxpayer could not get a loan or deposit by an account payee cheque or demand transaction for some bona fide reason, the authority vested with the power to impose penalty had a discretion not to levy the penalty.

13. In *Chamundi Granites (supra)* the Supreme Court considered the provision of sections 271D and 273B of the Act and held (page 266) :

"It is important to note that another provision, namely, section 273B was also incorporated which provides that notwithstanding any thing contained in the provisions of section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision is he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B in the Act. If there was a genuine and bona fide transaction and if for any reason the taxpayer could not get a loan or deposit by account-payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power."

14. In *Bhagwati Prasad Bajoria's (supra)* the Gauhati High Court held (page 490) :

"The transaction of loan has found place in the books of account of the assessee as well as the lender of the loan. None of the authorities have reached the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It appears to us that the assessee felt need of money and thus he approached the money-lender for advancement of the money, the transaction is reflected in the promissory notes executed by the assessee in favour of the lender. When there is an immediate need of money the person

cannot get such money from the nationalised bank to satisfy the immediate requirement."

15. In the instant case, we find that the Tribunal has given a categorical finding that the assessee had established a reasonable cause for failure to comply with the provisions of section 269SS of the Act. The Tribunal further found that the loan given by the Samajwadi Party was a genuine loan, which was reflected in the books of account on account of the Samajwadi Party as well as in the books of account of the assessee and that the cash given by the party was deposited in the bank of the assessee and, thereafter, used for the purpose of converting the nazul land into freehold. The Tribunal found that the genuineness of the transaction was also not disputed by the Assessing Officer.

16. In the light of the aforesaid, we find that even though the assessee had taken a loan in cash, none the less, the loan transaction was a genuine transaction and was routed through the bank account of the assessee which clearly shows the bona fides of the assessee. The cash given by the lender was not unaccounted money but was duly reflected in their books of account. The Assessing Officer also accepted the explanation and found the transaction to be genuine. The contention of the learned counsel for the appellant that since there was no urgency, the assessee could have taken the loan through cheque and should have processed the matter through regular banking channels is immaterial, inasmuch as the genuineness of the transaction has not been disputed by the Assessing Officer. Further, we find that the cash was deposited in the bank account of the assessee and the money was, thereafter, routed through the banking channel for payment to the Government for converting the land into freehold property.

17. In the light of the aforesaid, we are of the view that reasonable cause had been shown by the assessee and the provisions of section 273B of the Act was applicable. The appellate authorities were justified in holding that no penalty could be imposed since a reasonable cause was shown by the assessee."

7. In view of the above facts and circumstances we are of the view that the assessee has reasonable cause in taking loan from his father through bearer cheques amounting to Rs.10 lacs in violation of provision of section 269SS of the Act and therefore penalty u/s 271D cannot be levied on the assessee in view of provision of section 273B of the Income Tax Act. In the result we reverse the finding of Id CIT (A) in confirming the penalty u/s 271D of Rs.10 lacs.
8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 13/05/2016.

-Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 13/05/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi