

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA**

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

**I.T.A. No. 921/Kol/2015
Assessment Year: 2009-10**

Smt. Anita Hati.....Appellant
C/o. V.N. Purohit & Co.
Chartered Accountants, Diamond Chambers
Unit III, 4th Floor, Suit No. 4G
4, Chowringhee Lane
Kolkata - 700016
[Pan : AGSPR6100Q]

J.C.I.T., Range-1.....Respondent
Aayakar Bhawan, Khadinamore
G.T. Road, P.O. Chinsurah
Hooghly - 712101

Appearances by:

Shri V.N. Purohit, FCA appearing on behalf of the Assessee.

Shri Kalyan Nath, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 11, 2017

Date of pronouncing the order : September 20, 2017

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 6, Kolkata dated 10.03.2015 whereby he confirmed the penalty of Rs. 4,40,000/- imposed by the AO under section 271E of the Income Tax Act, 1961.

2. The assessee in the present case is an individual who is partner in the partnership firm of M/s. S. Hati. As noticed by the AO during the course of assessment proceedings of the said firm for A.Y. 2009-10, loan of Rs. 4,40,000/- taken by the assessee from the said firm was

repaid in cash. Since there was a violation of section 269T of the Act, penalty proceedings under section 271E were initiated by the AO. In response to the notice issued by the AO during the course of the said proceedings, the following explanation was offered by the assessee

- “1. Smt. Anita Hati is a partner of M/s. S. Hati (AAKFS8003R).*
 - 2. The amount in question was paid by the partner to the firm under the belief that the transaction between partners and firm is nothing but a payment to self and does not partake the character of loan or deposit in general law henceforth provisions of section 269SS & 269T are not applicable in such a case.*
 - 3. Smt. Anita Hati paid back the amount to fulfil the business requirement of the firm in which she is a partner.*
 - 4. In CIT vs Lokhpat firm exchange (Cinema) 2008, 304 ITR 172 (Raj) where the partnership firm had accepted cash deposits from its partners in the genuine bonafide belief that it was not different from them. Tribunal deleted penalty following CIT vs R.M. Chidambaram Pittars (1977) 106 ITR 292 (SC) holding that there cannot be a contract of service between firm and one of its partner applied if for purpose of section 269SS & 269T.*
- It was held that firm is not a juristic person and it can be doubted that assessee has acted bona fide in belief that transactions between firm and partners cannot be governed by section 269SS & 269T.*
- In view of the above your honour is earnestly requested to please drop the proceeding initiated u/s 271E of the Act and oblige as it will cause a genuine hardship to the assessee”*

3. The above submission made by the assessee was not found acceptable by the AO. According to him, the case of the assessee was not covered by any of the exemptions provided in section 269T of the Act. Relying the decision of Pune Bench of ITAT in the case of Balaji Traders vs Dy CIT 78 ITD 368, he held that the language of section 269T was unambiguous and even the genuine transaction of loans and deposits were covered under section 269T. He held that there existed no reasonable cause for repayment of loans by the assessee in

cash and consequently penalty u/s 271E was leviable. Accordingly, the penalty of Rs. 4,40,000/- was imposed by the AO under section 271E of the Act.

4. The penalty imposed by the AO u/s 271E was challenged by the assessee in the appeal filed before the Ld. CIT (A). During the course of appellate proceedings before the Ld. CIT (A), the submissions made before the AO were reiterated by the assessee in support of her case that the penalty imposed by the AO u/s 271E was not sustainable. The Ld. CIT (A) however did not find merit in the same and proceeded to confirm the penalty imposed by the AO u/s 271E of the Act for the following reasons given in paragraph no 4.1 of his impugned order:

“Appellants submission and facts available on record is carefully considered. The fact that the loan was repaid in cash has not been disputed by the assessee. Assessee’s plea that it was of the opinion that the transaction between partner & firm does not attract provisions of 269T is not accepted considering that appellant was regular assessee filing his return regularly with the help of experts. Further, as has been held in the case of Udaichand Santosh Kumar Jain vs ITO (2003) 131 Taxmann 184 (Indore), ignorance of law is no excuse for violation of provisions of section 269SS & 269T. It is also noted that besides the section providing no exemption to dealing with firm & partners as highlight by AO in his order, Hon’ble Supreme Court in the case of CIT vs A.W. Figgies & Co (1953) 241 ITR 405 has held that partners of firm are distinct as a civil entities, while firm as such is a separate & distinct until for the purpose of assessment. Further in the following judgments. CIT vs Nagpur Golden Transport Co. (1998) 233 ITR 389 (Delhi) and Soundanya Textile vs Asst CIT (2004) 362 ITR 488 it has been held that firm & its partners are separate legal entities for the purpose of this Act.”

Aggrieved by the order of the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal.

5. The learned counsel for the assessee mainly reiterated before us the submissions made on behalf of the assessee before the authorities below in support of the assessee's case. He also relied on the decision of Hon'ble Delhi High Court in the case of CIT vs Muthoot Financiers 275 CTR 501 as well as the decision of the Co-ordinate Bench of the Tribunal in the case of Agarwal Kejriwal & Co. vs Additional CIT (ITA No. 897/Kol/2013 dated 02.09.2014) in support of the assessee's case.

6. The learned DR, on the other hand, strongly supported the impugned order of the Ld. CIT (A) confirming the penalty imposed by the AO u/s 271E of the Act and also relied, besides the case laws relied upon by the Ld. CIT (A) in his impugned order, on the decision of Hon'ble Allahabad High Court in the case of CIT vs M/s. Sunil Sugar Co. (I.T. Appeal No. 652 of 2012 dated 27.07.2017).

7. We have considered the rival submissions and also perused the relevant material on record. It is observed that the decision of Hon'ble Allahabad High Court in the case of M/s. Sunil Sugar Co. (supra) cited by the learned DR in support of the revenue's case is distinguishable on facts in as much as the penalty u/s 271D was imposed in the said case on the assessee firm for the loans received in cash from its sister concerns. Similarly, even though it was held in the case CIT vs A.W. Figgies & Co. (supra) decided by the Hon'ble Supreme Court and in the case of CIT vs Nagpur Golden Transport Co. (supra) decided by

the Hon'ble Delhi High Court that the partnership firm and its partners are separate legal entities for the purpose of assessment, the said decision was rendered in the different context and not in the context of applicability of section 269SS and 269T to the loan transactions entered into between the partnership firm and its partners. In the case of CIT vs Muthoot Financiers (supra) cited by the learned counsel for the assessee, the similar issue had come up for consideration before the Hon'ble Delhi High Court directly in the context of applicability of section 269SS to the loan transaction between the firm and its partners and it was held by the Hon'ble Delhi High Court that such transactions cannot partake the character of loan or deposit so as to attract the provisions of section 269SS or section 271D. The Coordinate Bench of this Tribunal has also considered a similar issue in the case of Agarwal Kejriwal & Co. (supra) cited by the learned counsel for the assessee wherein the penalties imposed u/s 271D and 271E were deleted by the Tribunal by following the decision of Hon'ble Madras High Court in the case of CIT vs V. Sivakumar 262 CTR 109 wherein it was held that where the partner has given loan in cash and the firm has also repaid the said loan in cash, there is no violation of the provisions of section 269SS and 269T of the Act since the partner has no independent identity from that of the firm. In our opinion, the ratio of these judicial pronouncements is squarely applicable in the facts of the case and respectfully following the same, we cancel the penalty imposed by the AO u/s 271E and confirmed by the Ld. CIT (A).

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

Order Pronounced in the Open Court on 20th September, 2017.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 20/09/2017

Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Anita Hati, C/o. V.N. Purohit & Co. Chartered Accountants, Kolkata.
2. JCIT, Range - 1, Hooghly.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata