

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.561/Bang/2017
(Assessment Year : 2010-11)

Smt. Deepika,
C/o M/s. T M Marketing (India),
12, Ground Floor, Tulsi Plaza,
S.V. Lane, 3rd Cross, Chickpet,
Bangalore-560 053.

.... Appellant.

Vs.

Addl. Commissioner of Income Tax,
Range 5, Bangalore.

..... Respondent.

Appellant By : Shri Balram R Rao, Advocate.
Respondent By : Smt. Padma Meenkashi, JCIT (D.R)

Date of Hearing : 11.10.2017.
Date of Pronouncement : 13.10.2017.

O R D E R

Per Shri N.V.Vasudevan, J.M. :

This is an appeal by the assessee against the order dt.7.12.2015 of Commissioner of Income Tax (Appeals), Bangalore-2 for the Assessment Year 2010-11.

2. In this appeal, the assessee has challenged the order of the CIT (Appeals) whereby the CIT (Appeals) confirmed the order of the Assessing Officer imposing penalty on the assessee under Section 271D of the Income Tax Act, 1961 (in short 'the Act').

3. The assessee is an individual. In the course of assessment proceedings of the assessee for the Assessment Year 2010-11, the Assessing Officer noticed that the assessee had taken the following cash loan totaling to Rs.38,70,000 in cash in violation of provisions of Section 269SS of the Act.

1. Smt. Bhagyavanti :	Rs.14,00,000.
2. Sri Prakash Chand Mehta :	Rs.21,70,000.
3. Sri Prakash Chand Mehta (HUF) :	<u>Rs.3,00,000</u>
	<u>Rs.38,70,000</u>

Under Sec.269SS of the Act, no person shall accept loan above Rs.20,000/- in cash. Under Sec.271 of the Act, any person who contravenes the provisions of Sec.269SS of the Act is liable to pay penalty equal to the sum of loan accepted in violation of Sec.269SS of the Act. Since the loan in cash was accepted beyond the limit of Rs.20,000 as laid down in Section 269SS of the Act, the Assessing Officer initiated proceedings for imposing penalty under Section 271D of the Act. Under Section 273B of the Act, no penalty under Section 271D will be levied if the assessee is able to show reasonable cause for the failure to comply with the provisions of Section 269SS of the Act.

4. In the penalty proceedings, the assessee submitted that the transactions in question cannot be strictly construed as a loan because of the fact that the person giving the money and the person accepting the same were relatives being members of the same family. Besides the above, the assessee submitted that transactions were genuine and that the assessee was under bona fide belief that there was no breach of any provisions of law. The assessee also submitted that the money was received for making investment on behalf of the

close relatives and cannot be construed as a loan or deposit in strict sense of the said term.

5. The Assessing Officer and the CIT(Appeals) did not accept the above contentions of the assessee and imposed penalty under Section 271D of the Act and imposed penalty equivalent to the loan accepted in cash in violation of the provisions of Section 269SS of the Act. Aggrieved by the order of the CIT (Appeals), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee submitted that loans in question had been taken by the Assessee from her mother, from the HUF in which she was a member and Karta of the HUF in his individual capacity. It was submitted by him that the transaction of loan between close relatives does not attract the provision of section 269SS of the Act and in this regard placed reliance on the decision of ITAT, Kolkata in the case of Dr.B.G.Panda vs DCIT [2000] 111 Taxman 86 (Cal)(MAG). He also relied on several other judicial pronouncements in support of his claim that transactions of loan in cash between near relatives cannot attract imposition of penalty u/s.271D of the Act. The learned DR relied on the order of the CIT(A).

7. We have considered the rival submissions. The facts as decided by ITAT Kolkata in the case of Dr.B.G.Panda were that loan transactions were carried out in cash in violation of the provisions of Sec.269SS of the Act between husband and wife. On the question of levy of penalty u/s.271D of the Act, the Tribunal held as follows :-

“Section 269SS is applicable to the deposits or loan. It is true that both in the case of a loan and in the case of a deposit, there is a relationship of debtor or creditor between the party giving money and the party receiving money. In the case of deposit. the delivery of money is usually at the instance of the giver and it is for the

benefit of the person who deposits the money and the benefit normally being the earning of interest from the party who customarily accepts deposit. In the case of loan it is the borrower at whose instance and for whose needs the money is advanced. The borrowing is primarily for the benefit of a borrower although the person who lends the money may also stand to gain thereby earning interest on the money lent. In the instant case, this condition was not applicable because there was no relationship of the depositor or a creditor as no interest was involved. This was neither a loan nor a deposit. At the same time. the words 'any other person' are obviously a reference to the depositor as per the intention of the Legislature. The communication/transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Otherwise, there would be a powerful tendency to disturb the peace of families. to promote domestic broils, and to weaken or to destroy the feeling of mutual confidence which is the most enduring solace of married life.

In the instant case, the wife gave money to husband for construction of a house which was naturally a joint venture for the property of the family only. This transaction was not for commercial use. The amount directly received by the husband. i.e .. the assessee. was to the extent of Rs. 17.000 only and the balance amount of Rs. 26.000 was given by payment directly to the supplier of the material required for the construction of the house. Though the expenditure was apparently incurred by the husband being the karta/head of the family, it could not be said that the wife could not have any interest of her own in this house being constructed. The transaction was neither loan nor any gift as no 'interest' element was involved and there was no promise to return the amount with or without interest. It was clear that the money given by the wife was a joint venture of the family. Taking into consideration overall facts and circumstances of the case, it could be said that the aforesaid piece of legislation was not applicable in the instant case. By taking the liberal view and applying the golden rule of interpretation, the assessee had a reasonable cause within the meaning of section 27 3B. Therefore. the penalty should be deleted.

8. In the case of ACIT Vs. Vardaan Fashion (2015) 60 Taxmann.com 407 (Delhi-Trib.) it was held that where the Assessee intended to purchase a property jointly for which assessee's wife had advanced a sum of money to assessee and when deal for purchase of such house

property did not materialize, assessee refunded said amount through cheque to his wife. On the question whether acceptance of cash by husband from his wife would amount to taking of loan or advance in strict sense of section 269SS, the tribunal held that it cannot be construed as loan attracting provisions of Sec.269SS of the Act and therefore no penalty under section 271D could be levied.

9. The Income-tax Appellate Tribunal, Amritsar Bench, in the case of *ITO v. Tarlochan Singh* [2003] 128 Taxman 20 (Mag) was concerned with a case where the husband had taken the cash of Rs. 70,000 from his wife for the purpose of investment in the acquisition of immovable property. The Assessing Officer had levied the penalty under section 271D which was cancelled by the Income-tax Appellate Tribunal holding as under :

"Even keeping in view the contents of the Departmental Circular No. 387 [1985] 152 ITR (St.) 1), it was never the intention of the Legislature to punish a party involved in a genuine transaction. Therefore, by taking a liberal view in the instant case, the assessee had a reasonable cause within the meaning of section 273D.

Thus, keeping in view the entire facts of the instant case, and also keeping in view the intention of the Legislature in enacting the provisions of section 269SS, it was to be held that the assessee was prevented by sufficient cause from receiving the money by an account payee cheque or account payee bank draft.

In the instant case, the assessee was of the opinion that the amount in question did not require to be received by an account payee cheque or account payee draft. Thus, there was a reasonable cause and no penalty should have been levied.

From the above, it would be clear that the assessee had taken plea that firstly there was no violation of the provisions of section 269SS. Secondly, there was a reasonable cause. Thirdly, the assessee was under the bona fide belief that he was not required to receive the amount otherwise than by an account payee cheque or account payee draft. As an alternative submission, it was contended that the default could be considered either technical or

venial breach of the provisions of law and, therefore, no penalty under section 271D was leviable.

In view of the above discussion, no penalty under section 271D was leviable. It is well-settled that penalty provision should be interpreted as it stands and, in case of doubt, in a manner favourable to the taxpayer. If the court finds that the language is ambiguous or capable of more meaning than the one, then the court has to adopt the provision which favours the assessee, more particularly where the provisions relate to the imposition of penalty.

In view of the above, the penalty sustained by the Commissioner (Appeals) was cancelled."

10. The ratio of the above decision of the Income-tax Appellate Tribunal, Amritsar Bench, would be squarely applicable to the facts of the assessee's case. Here also, the daughter and member of the HUF have given money for certain specific purpose. The source and genuineness of the loan has been accepted by the AO. The cash loans in question therefore cannot be said fall within the mischief of Sec.269SS of the Act as near relatives cannot be said to be "Other person" within the meaning of Sec.269SS of the Act. In any event in the circumstances of the case, there was reasonable cause for accepting loans in cash.

11. In the case of *CIT v. Sunil Kumar Goel* [\[2009\] 315 ITR 163/183 Taxman 53](#), the Hon'ble Punjab and Haryana High Court held as under :

"A family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273B of the Act. Since the 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 of sections 271D and 271E of the Act against him. The deletion of penalty by the Tribunal was valid."

12. That the ratio of the above decision of the hon'ble Punjab and Haryana High Court would also be squarely applicable in respect of cash transaction between the assessee and his near relatives.

13. In the case of M.Yeshodha 351 ITR 265(Mad), the Hon'ble Madras High Court held that transaction of loan between father in law and daughter in law in cash cannot be subject matter of levy of penalty u/s.271D of the Act.

14. In the light of the aforesaid judicial pronouncements, we are of the view that imposition of penalty u/s.271D of the Act cannot be sustained. The same is directed to be deleted. The appeal of the Assessee is allowed.

15. In the result, appeal by the Assessee is allowed.

Order pronounced in the open court on the 13th day of Oct.,2017.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dt.13.10.2017.

*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.