

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2026/Mds/2015 &
ITA No.1097/Mds/2017
निर्धारण वर्ष /Assessment Year: 2006-07

Mrs.Hemalatha Jhabakh,
C/o.M/s.Dakshin Constructions Pvt.
Ltd., No.9/2, Kambar Street,
West Saidapet, Chennai-600 015.

Vs. The Asst. Commissioner of
Income Tax,
Company Range-I, Chennai.

[PAN: AAFPJ 7943 J]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by	:	Mr.A.S.Sriraman, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mr.A.Srinivasan, JCIT
सुनवाई की तारीख/Date of Hearing	:	26.09.2017
घोषणा की तारीख /Date of Pronouncement	:	27.09.2017

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

These are two appeals filed by the assessee against the consolidated order of the Commissioner of Income Tax (Appeals)-1, Chennai, in ITA Nos.97 & 98/10-11/A-1 (New No.ITAs.102 & 103/CIT(A)-1/2010-11) dated 29.07.2015 for the AY 2006-07 against the confirmation of the levy of penalty u/s.271D & 271E of the Act.

2. Mr.A.Srinivasan, JCIT, represented on behalf of the Revenue and Mr.A.S.Sriraman, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.AR that initially the assessee had filed a consolidated appeal in respect of both the penalties before the Tribunal. It was a submission that as the Tribunal had held that the separate appeal had been filed for each penalty, the assessee had filed the appeal separately as per provisions of Sec.271E in ITA No.1097/Mds/2017 consequently, it was delayed by 552 days. The assessee has filed a petition for condonation of delay explaining the reasons. The Revenue has not raised any objection to the condonation of the delay. Consequently, the delay in filing of the appeal in ITA No.1097/Mds/2017 is condoned and both the appeals disposed of on merits.

4. It was submitted by the Ld.AR that the assessee is an individual who had taken loan in cash from her husband, mother-in-law, sister and sister-in-law between 01.04.2005 and 05.05.2005 in cash for the purchase of an immovable property which was under negotiation. As negotiation did not go through, the assessee had returned the amounts in cash between 27.05.2005 and 25.07.2005. It was a submission that as the assessee had taken the loan and returned the same in cash, the AO had alleged violation of the provisions of Sec.269SS and 269T and had consequently levied penalty equal to the amount of the loan taken and the loan re-paid. It was a submission that before the AO, the assessee had specifically

given the details of the transaction being the negotiation for the purchases of the immovable property which was being undertaken. It was a submission that as the transactions did not go through, the assessee had returned the money. It was a submission that the loan taken was to an extent of Rs.3,75,000/- and the penalty levied u/s.271D and 271E are consolidated amount of Rs.11.00 lakhs which included a loan of Rs.5.00 lakhs re-paid by the assessee to her husband on 31.03.2006. It was a submission that the assessee had not used the money for any other purpose but the same was maintained in the cash book. It was a submission that the genuineness of the transaction has also not been disputed by the AO in so far as no addition on account of the same has been made in the assessment. It was a submission that the AO recognizes that the transactions are recorded in the cash book and it remains idle with the assessee till it was returned. It was a submission that the AO had not found the explanation given by the assessee to be false. It was a submission that the AO had levied penalty only on the ground that the amounts have been received on various dates and no advance was paid to the seller and why there was delay in re-payment if the deal did not go through. It was a submission that the amounts were taken on various dates as and when the relatives were able to give the money and no advance was paid to the seller because the assessee was still in the process of negotiations and the delay in re-payment was because the negotiations were going on and only when it was clear that the deal would not go through the amounts were re-paid back

immediately. It was a submission that the penalty as levied by the AO and as confirmed by the Ld.CIT(A) may be deleted.

5. In reply, the Ld.DR vehemently supported the order of the AO and the CIT(A). It was a submission that the assessee had violated the provisions of Sec.269SS & Sec.269T and consequently, the penalty was liable to be confirmed.

6. We have considered the rival submissions. A perusal of the penalty order shows that the assessee has given the explanation for the reason for taking and repaying the loans in cash. The loans have been taken from the very close relatives with whom the assessee is also residing and the genuineness of the loans is also not in dispute. The explanation given by the assessee is also not found to be false. Any explanation given by the assessee can be disbelieved but by just disbelieving the explanation, it does not make the explanation given by the assessee as false or improbable or implausible. Unless, the explanation is found to be false or the transaction is found to be not genuine, normally penalties are not levied. Admittedly, there is an express prohibition on taking or return of loan in excess of prescribed limit. However, the penalties u/s.271D & 271E on account of this violation u/s.269SS & Sec.269T is controlled by the provisions of Sec.273B. This provides for non-levy of the penalty, if a reasonable cause is shown. In the present case, the assessee's explanation having been not shown to be false or improbable or

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implausible and the transaction having been found to be genuine, in view of the principles laid down by the Hon'ble Jurisdictional High Court in the case of CIT v. Smt. M.Yeshoda reported in 351 ITR 265, we are of the view that the penalties levied u/s.271D & u/s.271E are liable to be cancelled in so far as the assessee has given a reasonable explanation and has shown the reasonable cause and we do so.

7. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on September 27, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P GEORGE,)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: September 27, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF