

आय अाधकरण, “डी” ढयायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL ‘D’ BENCH, CHENNAI

ढी चं पूजार, लेखा सदय एवं ढी धुवु आर.एल रेडी, ढयायक सदय के सम

**Before Shri Chandra Poojari, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member**

आयकर अपील सं./I.T.A.No.350/Mds/2017

ढनधारण वष/Assessment Year:2004-05

Smt. Usha Anandan,
No. 169/10, R.K. Mutt Road,
Mandaveli, Chennai 600 028.

The Income Tax Officer,
Vs. Non Corporate Ward 2(1),
Chennai 600 034.

[PAN:AABPU0407E]

(अपीलाथ /Appellant)

(ढयथ/Respondent)

अपीलाथ का ओर से / Appellant by : Ms. B. Jaisheila, C.A.

ढयथ का ओर से/Respondent by : Shri S. Mohamed Mustafa, JCIT

सुनवाई का ताराख/ Date of hearing : 22.05.2017

घोषणा का ताराख /Date of Pronouncement : 12.07.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Chennai, dated 15.11.2016 relevant to the assessment year 2004-05 passed under section 271D of the Income Tax Act, 1961 [Act+in short], by raising various grounds as under:

- “1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

Commissioner of Income Tax (Appeals) failed to order of the Assessing Officer levying penalty u/s.271D is without jurisdiction.

3. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Joint Commissioner of Income Tax, Range - 11, Chennai levying penalty u/s.271D is barred by time.*
4. *For that the Commissioner of Income Tax (Appeals) erred in upholding the levy of penalty of Rs.1,70,000/-.*
5. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 271D are not invocable in the facts and circumstances of the case.*
6. *For that the Commissioner of Income Tax (Appeals) failed to appreciate the relevance of section 273B in the impugned transaction.*
7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that there was reasonable cause for the failure made under section 269SS.*
8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the loans were proved and accepted as genuine transaction and that there was no intention to evade tax.*
9. *For that the Commissioner of Income Tax (Appeals) should have appreciated that the contravention of the provisions of section 269SS was merely technical or venial in nature.”*

2. Brief facts of the case are that the assessee is engaged in construction business under the name and style of M/s. Uma Maheswari Constructions. The assessment under section 143(3) r.w.s. 147 of the Act was completed on 28.02.2011 by assessing total income of the assessee at .4,52,175/- and a tax of .1,99,979/- was demanded. Shri V. Anandan husband of the assessee is assessed in Business Ward 1(1), Chennai. During the course of assessment proceedings Shri V. Anandan in a sworn statement recorded on 23.12.2011,

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

confirmed of having given cash loans of .1.7 lakhs to Smt. Usha Anandan, his wife. He evidenced this fact by producing a ledger account wherein there is a credit of .1.7 lakhs - cash payment of .1,50,000/- and .20,000/- on 01.04.2003 and 14.05.2003. The above fact was brought to light by the Assessing Officer of Shri V. Anandan viz. ITO Ward 1(1), Chennai by proposing to initiate proceedings under section 271D of the Act. Based on the above, notice under section 271D r.w.s. 274 of the Act was issued to the assessee on 08.11.2012 for violation of provisions of Section 269SS of the Act. In response to the above notice, the assessee's authorized representative appeared and submitted a reply dated 22.11.2012 wherein it was submitted as under:

"As I was new this field of business I was in need of money for meeting the day to day expenses of the construction activity and since I had no other source from whom I could borrow money in short time notice, I had borrowed monies from my husband in good faith that there is no violation of law. In case I do not get money, the whole construction activity would come to stand still which will result in greater loss. This being the scenario I had borrowed money from my husband not knowing that I was violating the provisions of Section 269SS."

She also submitted before the Assessing Officer that she has genuinely borrowed the money from her husband and the same has also been accepted by his Assessing Officer. She being the wife of Shri V. Anandan, the money received by her from her husband cannot be construed to be a transaction between the borrower and the lender and penalty cannot be maintained in respect of loans from husband. Apart from the above submissions, the assessee

videncing the urgency for taking cash loans exceeding .20,000/- for her construction business, which was in violation of provisions of section 269SS of the Act. Since the assessee failed to establish any reasonable cause as required under section 273B of the Act for contravening the provisions of section 269SS of the Act by accepting loan in excess of .20,000/-, the Assessing Officer has held that the assessee is liable for penalty under section 271D of the Act and levied penalty of .1,70,000/- vide order dated 28.12.2012.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) confirmed the penalty levied under section 271D of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that notice under section 271D of the Act dated 29.12.2011 was issued to the assessee and penalty order should have been passed by 30.06.2012, whereas, in the present case, penalty order under section 271D of the Act was passed on 28.12.2012 and thus, barred by limitation. He also relied on the decision in the case of Shri Mohammed Saleem v. ACIT in I.T.A. No. 833/Hyd/2008 dated 20.11.2009 by stating that the issue is squarely covered in favour of the assessee.

DR has submitted that the penalty proceedings

was initiated by issuing show cause notice under section 271D r.w.s. 274 of the Act dated 08.11.2012 and penalty order was passed on 28.12.2012 before the expiry of six months from the month of November, 2012 in which the proceedings have been initiated and this is within the time limit prescribed under section 275(1)(c) of the Act and relied on the decision of Chandigarh Special Bench of the Tribunal in the case of Diwan Chand Amritlal v. DCIT 283 ITR (AT) 203.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. We find that on an identical issue in similar facts and circumstances, in the case of Shri Mohammed Saleem v. ACIT (supra), the Hyderabad Benches of the Tribunal has observed and held as under:

“5. We have heard both the parties and perused the material on record. In the present case, the penalty Proceedings to be initiated by the Addl. Commissioner and he has initiated the same vide show cause notice dated 22.8.2006 and penalty order passed on 29.11.2006 and the notice issued by the assessing officer vide notice dated 28.2.2006 is having no legal consequence since this would be without any jurisdiction since he is having no authority under law to initiate the penalty proceedings u/s 271D of the IT Act. As such, notice issued by the Addl. Commissioner to be considered for computing the time limit to levy penalty u/s 271D of the IT Act. The judgements cited supra are supporting our view. Accordingly, there is no merit in the argument of the assessee's counsel on this issue. Regarding the other arguments of the assessee's counsel that the money borrowed from his wife and there was only technical and venial breach. The transaction between husband and wife cannot be constitute as a loan transaction, law does not take into account trivialities. In respect of the loan taken from the wife, the said borrowing carries no interest and no condition regarding the repayment. It was taken on account of urgent business commitment. It cannot be construed to be a transaction borrower and the lender. Genuineness of the transaction was not doubted. Apropos the relation of husband and wife, it is said in the Bible "what God hath joined together man cannot cast

*...sted mitigating circumstances. In our opinion,
...ed in respect of loan from wife. Accordingly,
penalty is deleted."*

Similarly, in the present case also, with regard to limitation, the notice under section 271D r.w.s. 274 of the Act was issued on 08.11.2012 and penalty order was passed on 28.12.2012 before the expiry of six months from the month of November, 2012 in which the proceedings have been initiated. Accordingly, there is no merit in the argument of the Id. Counsel for the assessee. By relying on the decision in the case of CIT v. Sunil Kumar Goel 183 Taxman 53 (P&H), the assessee has submitted before the Id. CIT(A) that the loan transaction was between husband and wife, entries were also recorded in the books of accounts of the assessee as well as her husband, she pleaded for deleting the penalty levied under section 271D of the Act. The said submission of the assessee was not disputed in the appellate order. Thus, there was no technical and venial breach. The transaction between husband and wife cannot be constituted as a loan transaction; law does not take into account trivialities. In respect of the loan taken from the husband, the said borrowing carries no interest and no condition regarding the repayment. It was taken on account of urgent business commitment. It cannot be construed to be a transaction of borrower and the lender. Under the above facts and circumstances and respectfully following the decision in the case of Shri Mohammed Saleem v. ACIT (supra), in our considered opinion, the penalty cannot be maintained in respect of loan taken

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

is deleted.

the penalty levied under section 271D of the Act

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 12th July, 2017 at Chennai.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 12.07.2017

Vm/-

आदेश का प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
प्रभागीय प्रशासक/DR & 6. गाडफाईल/GF.