

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. Nos. 182/Kol/2016
Assessment Year: 2011-12

Income-tax Officer, Wd-32(3), Kolkata.	Vs.	Smt. Sukhjeet Bhasin (PAN: ADXPB0016H)
Appellant		Respondent

Date of Hearing	12.06.2018
Date of Pronouncement	27.06.2018
For the Appellant	Shri Sallong Yaden, Add. CIT
For the Respondent	Mrs. Disha Kedia, AR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the Revenue is against the order of the Ld. CIT(A)-9, Kolkata dated 04.11.2015 for assessment year 2011-12 against the deletion of penalty levied u/s. 271E of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. The sole issue involved in this appeal of Revenue is against the order of Ld. CIT(A) in deleting the penalty levied u/s. 271E of the Act.

3. Briefly stated facts as observed by the AO are that the assessee had taken loans from M/s. Sigma Construction, which is a proprietary concern of her husband. It was also found by the AO that the opening balance of the unsecured loans so obtained by the assessee from M/s. Sigma Construction comes to over Rs.1.32 cr. and the said amount by the end of the assessment year under consideration had mounted to almost Rs.2.73 cr. The AO further observed that during the year, the assessee had made payments in cash, in excess of Rs. 20,000/- by way of labour charges on behalf of M/s. Sigma Construction. According to AO, every such payment resulted in a corresponding decrease in the aforementioned loan amount in the respective books of the two concerns. According to AO, these payments by the

assessee to M/s. Sigma Construction is loan repayment in cash, which in excess of Rs. 20,000/- attracts the mischief of sec. 269T of the Act. And since penalty within the purview of sec. 269T is imposable u/s. 271E of the Act, penalty proceedings u/s. 271E were initiated. In reply, assessee submitted before the AO that the transaction is not at all a repayment of loan. It was also submitted that the transactions were between sister concerns and, therefore, not covered u/s. 269T of the Act. After considering the submission of the assessee, the AO concluded that these payments are in the nature of cash repayments of loan by the assessee. According to AO, the two concerns in question cannot be considered as sister concerns just by virtue of the fact that they are proprietary concerns of husband and wife. Therefore, the AO imposed penalty of Rs. 49,16,050/- u/s. 271E of the Act for failure to comply with the provisions of sec. 269T of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who following the order of Tribunal in assessee's husband's case directed to delete the penalty levied by observing as under:

“4. There is only issue involved in all the grounds of appeal which relates to levy of penalty u/s. 271E of the I. T. Act, 1961. This issue has been adjudicated by ITAT in ITA No.1016/Kol/2003 in the appellant's husband (Mr. Ashok Kumar Bhasin's) case for the AY 1998-99, therefore, on identical facts, following the decision of ITAT, the AO is directed to delete the penalty levied.”

Aggrieved, Revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Ld. CIT(A) has given relief to the assessee after taking note of the Tribunal's decision in similar facts and circumstances of the case as that of the assessee. We also note that in the assessee's husband's case (supra) also same set of facts existed and similar penalty was levied u/s. 271E of the Act. We note that the Ld. CIT(A) taking note of the Tribunal's decision, cited supra, applying the same logic and ratio has given relief to the assessee. The Ld. DR could not bring out any change in facts or law as that of the assessee's husband's case and that of the assessee's case before us. So, respectfully following the order of the Tribunal in assessee's husband's case, we are not inclined to

interfere with the order of the Ld. CIT(A) and the same is hereby upheld. Appeal of Revenue is dismissed.

5. In the result, the appeal of Revenue is dismissed.

Order is pronounced in the open court on 27.06.2018

Sd/-
(Dr. A.L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :27th June, 2018

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Ward-32(3), Kolkata
2. Respondent – Smt. Sukhjeet Bhasin 52A, Shakespeare Sarani, Kolkata-700 017.
3. The CIT(A) - 9, Kolkata (e-mailed)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (e-mailed)

/True Copy,

By order,

Sr. Pvt. Secretary