

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

**ITA Nos.1378/Hyd/2015 & 563/Hyd/2016
(Assessment Year: 2010-11)**

Shri Tej Narayan Agarwal Vs Addl. CIT, Range-8
Hyderabad Hyderabad
PAN: AFFPA0999G
(Appellant) (Respondent)

For Assessee : Shri K.A. Sai Prasad
For Revenue : Smt. M. Narmada, DR

Date of Hearing: 17.07.2018
Date of Pronouncement: 27.07.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both are assessee's appeals for the A.Y 2010-11 against the order of the CIT(A)-2, Hyderabad dated 25.01.2016 confirming the levy of penalty u/s 271D and 271E of the IT Act.

2. The assessee has raised the following grounds of appeal against the levy of penalty u/s 271E of the Act:

"1. The order of the learned CIT (A) confirming the penalty of Rs.6,29,000 levied u/s 271E is not correct either on facts or in law and in both.

2. The learned First Appellate Authority failed to appreciate the fact that in the facts and circumstances of the case, the provisions of section 269T were not applicable to the amounts paid in cash by the appellant.

3. The learned First Appellate Authority failed to appreciate the appellants claim that the amounts in question are

neither loans nor advances and hence the levy of penalty u/s 271E is unjustified.

4. The learned First Appellate Authority failed to appreciate the circumstances under which the amounts were paid in cash by the appellant”.

3. Against the order of the CIT (A) confirming the penalty u/s 271D, the assessee has raised the following grounds of appeal:

“1. The order of the learned CIT (A) confirming the penalty of Rs.6,29,000 levied u/s 271D is not correct either on facts or in law and in both.

2. The learned First Appellate Authority failed to appreciate the fact that proper opportunity was not accorded before levying penalty u/s 271D of the I.T. Act.

3. The learned CIT (A) is not justified in not appreciating the circumstances under which cash loans were taken by the appellant”.

4. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2010-11 on 10.07.2010 admitting total income of Rs.4,49,790. The case was selected for scrutiny and accordingly notice u/s 143(3) was issued to the assessee on 24.08.2007. The assessee appeared and furnished the details called for and the assessment was completed by making an addition of Rs.3,66,047 towards the short term capital gain which was set off against the carried forward loss. Subsequently, the AO initiated the penalty proceedings u/s 271D and also u/s 271E of the Act on the ground that the assessee has received loans in cash and also repaid the loans in cash in violation of the provisions of section 269SS and 269T of the Act. The assessee submitted that his family members had intended to purchase a property and therefore, they entered into an

agreement of sale and had requested the assessee to take out a D.D and consequently had received a sum of Rs.6,29,000 and the assessee had taken out the DD accordingly. But, since the transaction did not go through, the DDs were cancelled and the amounts were repaid to his children, and therefore, the transaction is not a loan and the penalty is not leviable. The AO, however, did not accept the assessee's contention and observed that the transaction does not fall in any of the exemptions laid down u/s 269SS and 269(T) of the Act and therefore, penalty is leviable. He, accordingly levied penalty u/s 271E and 271D of the Act against which the assessee preferred appeals before the CIT (A). The CIT (A) however, confirmed the penalty levied by the AO and the assessee is in second appeal before us.

5. The learned Counsel for the assessee while explaining the transaction, has referred to the copy of the agreement of sale dated 26.08.2009, wherein all the parties (who are alleged to have given loans to the assessee i.e. the sons and daughters-in-law of the assessee) have entered into an agreement for purchase of a property and have also paid part of the consideration by cheques and part of the consideration by way of cash. He has also drawn our attention to the DD for an amount of Rs.5,55,000 drawn in favour of stamp duty collection account and DD for an amount of Rs.74,000 drawn in favour of CTO N S Road, and the pay slips to show that the amounts were utilized for purchase of the DDs. He has also drawn our attention to the AXIS Bank A/c of the assessee wherein the transaction of purchase of DDs after the deposit of the amount and also cancellation of the DDs thereafter are reflected. According to the learned Counsel, the above

transaction cannot be considered as a loan or advance referred to in section 269SS and 269T of the Act. He submitted that the DDs were purchased by the assessee since he was a premium member of the AXIS Bank and the DD charges were not payable for the DDs purchased by him. He submitted that it was only a transaction of convenience and not a loan or advance as held by the AO and therefore, both the penalties should be deleted.

6. The learned DR, on the other hand, supported the orders of the CIT (A).

7. Having regard to the rival contentions and the material on record, we find that the assessee had furnished all the necessary details of the transaction before the CIT (A), but the CIT (A) has failed to consider the details filed by the assessee. On examination of the documents filed by the assessee, we are convinced that the amount received and repaid by the assessee subsequently is not a loan. This is a transaction done on behalf of his children to accommodate than in obtaining DD's without charges and cannot be considered as taking of loan or repayment of loan in cash. The decisions relied upon by the learned Counsel for the assessee, i.e. CIT vs. Deccan Designs (India) P Ltd reported in 347 ITR 580 (Mad) and also in the case of Director of Income Tax (Exemption) vs. All India Deaf and Dumb Society reported in 283 ITR 113 (Del) are to the effect that where the transactions are genuine and enough reasons are offered by the assessee to justify the cash transaction, the penalty is not leviable both u/s 271D

and 271E of the Act. In view of the same, the assessee's appeals are allowed.

8. In the result, assessee's appeals are allowed.

Order pronounced in the Open Court on 27th July, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated July 2018.

Vinodan/sps

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- 2 Addl. CIT, Range-8 Hyderabad
- 3 CIT (A)-2, Hyderabad
- 4 Pr. CIT – 2, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order