

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4076/Del/2014
Asstt. Year: 2006-07

Jai Jawala Processors Barsat Road, Vill Chandoli Panipat PAN AAEFJ1820H	Vs.	ITO Ward-4 Panipat
(Appellant)		(Respondent)

Assessee by:	Shri K.C. Aneja, ITF
Department by :	Shri Amit Jain Sr.DR
Date of Hearing	25/07/2018
Date of pronouncement	30/07/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 12.12.2013 passed by Ld. CIT(Appeals), Karnal in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2006-07. The assessee is aggrieved by levy of penalty of Rs. 2,19,725/- u/s 271(1)(c) on account of addition made u/s 68 on unsecured loans taken from three persons by the assessee during the year.

2. The facts in brief are that the assessee has shown unsecured loan in its books of accounts from three persons, viz. i) Smt. Nancy Garg Rs. 3,00,000/-; ii) Smt. Shafali Garg Rs. 3,01,479/-; and iii) Shri Sanju Garg Rs. 1,05,000/-. Ld. AO has added all these loans u/s 68 on the ground that before making withdrawals by these persons for advancing loan to the assessee, there has been certain deposits in the bank account of the lenders for which the source has not been given and nor these lenders were produced for examination. Accordingly, all the amount of loan received from the lenders aggregating to Rs. 7,05,000/- and interest paid by the assessee thereon at Rs. 13,084/- was added u/s 68. Such an addition stands confirmed in the appellate proceedings. Now the penalty has been levied on the ground that these additions stand confirmed from the stage of the Tribunal and the explanation furnished by the assessee has not been found to be tenable. Ld. CIT (A) who has confirmed the said penalty after referring to the findings given in the quantum proceedings and also referring to various judgments.

3. Before us Ld. Counsel submitted that the assessee in support of the loan taken from two ladies, have filed their income tax returns; confirmations; and also copy of their bank statement. He drew our attention to the copy of the bank statement and submitted that the major entry before issuing the cheque to the assessee has come by way of clearance and only cash deposits of Rs. 1,25,000/- was made, before issuing the cheque to the assessee. These persons were having independent source of income and were filing the return of income; therefore, it cannot be held that assessee has failed to discharge the onus atleast in the penalty proceedings. With regard to loan taken from Shri Sanju, he submitted that the relevant documents from the said party could not be furnished as assessee did not had good relationship due to family feuds but has provided PAN Number of the

said party and the TDS certificate of the said party. Thus, he submitted that there cannot be any case of concealment of income of furnishing of inaccurate particulars of income.

3. On the other hand Ld. DR submitted that in cases of two ladies there is a categorical finding that before issuing cheques certain cash was deposited and despite opportunity given by the AO to the assessee, the source of these deposits in their hands could not be established. Accordingly, the creditworthiness of the parties was in doubt. Regarding the loan taken from Shri Sanju, assessee could prove anything; therefore the additions got confirmed from the stage of the Tribunal. Accordingly, the penalty levied should be confirmed.

4. We have heard the rival submissions and also perused the relevant finding given in the impugned order as well as material referred to before us. The penalty u/s 271(1)(c) has been levied on account of addition made u/s 68 on the ground that unsecured loans received by the assessee were not genuine and were held to be deemed income of the assessee u/s 68. During the course of the quantum proceedings as well as in the penalty proceedings in so far as two persons are concerned, namely, Smt. Nancy Garg and Smt. Shifali Garg from whom the assessee has received Rs. 3 lacs each, we find that both these ladies are assessed to tax and have also furnished their copies of income tax returns alongwith their confirmation and bank statement. On perusal of the bank statement it is seen that certain amount have been come by way of clearance in February, 2006 and cash of Rs. 1,25,000/- was deposited in same month. Thereafter almost after one month cheque has been issued to the assessee's firm. Once the creditor has confirmed the loan; is regularly assessed to tax and has given the bank statement from which the loan has been given, then the source of loan given from the bank account

can be said to be proved by the said person. As far as assessee is concerned primary onus to substantiate the nature and source of credit entry in the books not account gets discharged unless it is brought on record by some other material facts that assessee's own unaccounted money has been routed through these accounts. Though addition has been confirmed in the quantum proceedings on the ground source of credit in the bank account has not been proved, but so far as penalty proceedings are concerned, which is separate and distinct proceedings, the assessee may rely on same material and can always show that he has not concealed any income or furnished any inaccurate particulars of income. Here not only these two persons have confirmed the loan but also owned up to have been given from their bank account and thus, it is in their hands the source should have been enquired into. Accordingly, on these facts and on the basis of evidences furnished, we do not find that it is a fit case for levy of penalty u/s 271(1)(c) on these two additions on the loan received from these two persons. In the case of Shri Sanju also from whom assessee has received a sum of Rs. 1,05,000/-, assessee has given the PAN details of the said party and also TDS certificate to show that the amount coming from his bank account in the books of the assessee is coming from the known source. Though in absence of other corroborative documentary evidences the addition has been confirmed in quantum proceedings, but again if the person was given the loan who is assessed to tax and whose identity is known, then under the deeming provision of section 68 it cannot be conclusively held that such a loan received by the assessee also tantamount to concealment of income. The word "may" in section 68 postulates the degree of evidences and explanation to prove nature and source of credit. If the explanation furnished though may not have been found to be sufficient in the quantum proceedings; but in the penalty proceedings

if evidences filed and explanation given has not been found to be false, then preponderance of probability factors are to be seen and if there is no adverse material to dislodge the assessee's explanation then he cannot be charged for penal consequences under section 271(1)(c). Thus, penalty levied on loan received from such person also deserves to be deleted.

5. In the result penalty levied by the AO is directed to be deleted.

Order pronounced in the open Court on 30th July, 2018.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 30/07/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

