

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH
BEFORE SHRI. SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.45/Chd/2018
Assessment Year: 2011-12

Shri. Rajesh Khanna
S/o Late M.R. Khanna
R/o H.No. 773, Section 91,
Mohali

Vs. The JCIT
Panchkula Range

PAN No. AKOPK1364K

(Appellant)

(Respondent)

Assessee By : Shri. Rajesh Khanna
Revenue By : Smt. Chandrakanta

Date of hearing : 02/08/2018
Date of Pronouncement : 07/08/2018

ORDER

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A), Panchkula dt. 14/11/2017.

2. The assessee has filed revised grounds on 06/03/2018 substituting the original grounds. The grounds are as under:

1. *That reasonable causes were existing for Cash Loans, and well Explained as urgent deposits into Bank Accounts were required in order to avoid decline of cheques given to parties, which would have resulted financial and moral integrity loss to the Applicant.*

2. *JCIT did not interpret correctly ,the given answer by the appellant, to reach to the final verdict, otherwise would have given relief u/s273B, as compelling evidences were produced. Moreover order was not served within the time limitation as it was time barred.*

3. *Cash loan transactions were accepted to be genuine by the ITO during scrutiny and were deposited into Banking channel. As per reference from Allahabad High Court 24-08-2015 in case of Dimple Yadav, cash money routed through the banking channel for payment as well as cash loan transaction being genuine, does not fit for penalty u/s 271 D read with 269SS, is clear ground for quashing of this penalty . Annexure 4.*

4. *When the appellate agreed for addition of Rs 1,70,000/- as income, subject to no penal action under Income Tax Act, 2061, during scrutiny, to buy peace of mind. When the agreed addition after scrutiny was deposited by the appellant, subject to no penal action in future.*

5. *Satisfaction of ITO during scrutiny u/s 143(1), wherein no doubt was raised on authenticity of Loans having accepted Affidavits from Lenders as such proving the fact that need based loans from close relatives were genuine, and accepted as such.*

6. *Honesty should not be punished in such way.*

Honest submission of the appellant having taken cash as Loan from his Blood Relatives, during the scrutiny process ,whereas by terming the said amounts as Gifts during scrutiny, could have saved him of all botheration. But acted honestly by putting true statements and submissions during scrutiny by terming loan as loan, shows that Appellant have strong belief in Law of Land and Justice.

As objectionable cash loans and timely help are different aspects and needs practical evaluation, Law in this regard should not be applied blindly based merely on terminology rather essence of Law, must be maintained, otherwise timely help among close relatives, would subject to this kind of punishment, is violation of principles of Natural Justice. Hence it is prayed to give kind consideration to the appeal of quash the penalty order.

3. The moot issue to be decided is that whether provisions of Section 271D read with 269 SS are attracted in the case of the assessee or not. Section 271D reads as under:

271D. (1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

In the above Section, "Specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

4. Brief facts of the case are that the assessee has received loans during the assessment year which have been duly examined by the Assessing Officer during the assessment proceedings. Subsequently, the cash loans from his sister, sister- in -law, and from father-in-law have been treated as in violation to Section 269SS of the Income Tax Act,1961, and the JCIT levied penalty under section 271D. The same has been confirmed by the Ld. CIT(A) on the grounds that the assessee has not submitted in its reply that no urgency have been proved by the assessee and no valid reason for accepting the loan in cash has been demonstrated by the assessee.

5. During the hearing before us, the assessee in person argued that the amounts have been received from the sister of Rs. 3,00,000/- on 18/05/2010 and the said amount was deposited in the bank on the same date for the clearance of cheques issued by him in favour of two persons namely Shri. Surinder Singh and Shri Charanjeet Singh. He submitted that the cheques were returned owing to lack of balance in the bank account and were cleared only after depositing of the cash received from the sister. The photocopy of the bank statements has been filed before us.

5.1 Regarding the amount of Rs. 2,00,000/- received from the sister- in- law on 11/06/2010 was deposited as the cheques issued to one Mr. Raj Kumar, and two Mr. Ashish Mittal needs urgent clearance. He has filed the relevant bank statement depicting the clearance of the cheques, post deposit of the cash.

5.2 Further regarding the cash deposit of Rs. 1,50,000/- received from father-in-law on 15/12/2010 after banking hours which was deposited in the bank on 16/12/2010 which were used for clearance of cheque issued in favour of one Mr. Sukhpal Singh. The relevant bank statement has also been filed before us. It was also argued before us that the amounts received were also returned to the sister, sister-in-law, Father-in-law in the same financial year. The sources of the loans were not in dispute. The amounts were received to fulfill the commitments of honoring the cheques issued for a property deal and also for online purchase of air tickets.

6. Ld. DR relied on the order of the Ld. CIT(A).

7. We have heard arguments of both the parties and perused the material placed before us. We find that the assessee had proved cogently with sufficient documentary evidences, the reasonable cause for receipt of cash loans based on the requirement, utilization and conduct of the assessee on receipt of cash as loans which were received to fulfill the urgent requirement of the assessee in clearing the cheques which have been already issued and to purchase air tickets. Section 273B clearly explains that no penalty shall be imposable on the person for any failure referred in the section 271D if he proves that there was a reasonable cause for the said failure.

8. Hence, the Ld. CIT(A)'s observation that the assessee has not submitted what was the urgency of receipt of cash loans and no reasonable cause was shown cannot be accepted in view of the clear documentary evidences and facts proving reasonable cause before us. In view of the above, the penalty levied is liable to be deleted.

9. As a result, appeal of the Assessee is allowed.

Order pronounced in the Open Court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 07/08/2018

AG

Copy to:

1. The Appellant, 2.The Respondent, 3.The CIT,4. The CIT(A), 5.The DR