

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
(समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य)
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. No. 858/Kol/2018
Assessment Years: 2010-11

Sohan Ajmeria, Prop. M/s. Kamala Mini Rice Mill PAN: AGLPA 4441 J	Vs.	JCIT, Range-3, Bankura
Appellant		Respondent

Date of Hearing	05.02.2019
Date of Pronouncement	15.03.2019
For the Appellant	Shri D.K. Sen, Adv.
For the Respondent	Shri Shankar Halder, SR. DR(JCIT)

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the Assessee against the order of CIT(A), Durgapur dated 15.02.2018 for A.Y. 2010-11.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the penalty levied u/s 271E of the Income Tax Act, 1961.

3. The brief fact of the case is that the Joint CIT in the order u/s 271E noted that the ITO in his assessment order has observed that the assessee has repaid loan in cash of Rs. 1,88,000/- to Ms. Nitu Ajmeria which according to ITO is in contravention of provision of section 269T of the Act. Therefore, Jt. CIT initiated proceedings to levy penalty u/s 271E of the Act. During proceedings before Joint CIT it was brought to his notice that Ms. Nitu Ajmeria is his brother's wife. And that they all live in a joint family and the amount has been given to her in cash since Ms. Ajmeria was hospitalized. Since the payment was urgently required for medical exigency and it fell on Sunday i.e. 28.02.2010, the assessee had no other alternative but to make repayment of amount in cash other than by made of account payee / cheque / draft. The Ld. JCIT did not accept the plea of the assessee and imposed a penalty of Rs. 1,88,000/-. Aggrieved the assessee preferred an appeal before Ld CIT(A), who confirmed the order. Aggrieved the assessee is before us.

4. We note that the factual matrix discussed above before the Joint CIT was repeated before the Ld. CIT(A) which facts has not been found wrong by both the authorities. We note that the assessee has explained before the authorities below the circumstances which led him to make the repayment in cash. We note that the assessee stayed along with his brother in a joint family, and he took money from his sister-in-law Smt. Nitu Ajmeria and the amount was repaid on Sunday i.e. 28.02.2010 and that too when she was hospitalized. So when money was required for a medical exigency and the repayment of loan happened on Sunday, and it is common knowledge that there is no banking facility on Sunday, there is reasonable cause for making payment in cash. These facts are corroborated by filing an affidavit.

5. In any case, we note that the transaction between the family members cannot be termed as either loan or deposit and it is only arrangement between family members which are done to help each other when there is need/necessity. So, therefore, if one of the family members lend a helping hand to other members in his/her time of necessity that cannot be strictly termed as *loan or deposit* and therefore the imposition of penalty was not warranted. For that we rely on the order of the Hon'ble High Court of Calcutta in the case of Shri Mansur Ali Laskar ITAT No. 111 of 2012 GA No. No. 1498 of 2012 wherein it was held that transaction between the relatives and family members are not covered by the provisions of section 269SS and 269T of the Act. Therefore, we direct the deletion of the penalty imposed on the assessee.

6. In the result, the appeal of the Assessee is allowed.

Order is pronounced in the open court on 15.03.2019

Sd/-

(P.M. Jagtap)
Vice-President

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 15th March, 2019

Biswajit (Sr. P.S.)

Copy of the order forwarded to:

1. Appellant – Sohan Ajmeria, Prop. M/s. Kamala Mini Rice Mill, Sukhodali, S.D. Khatra, Bankura – 722 150.
2. Respondent – JCIT, Range – 3, Bilash Bhawan, Chandmarindanga, Bankura – 712 101.
3. The CIT(A) - (through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (through e-mail)

/True Copy,

By order,

Assistant Registrar/H.O.O.
ITAT, Kolkata Benches