

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A.T.VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.2254/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2011-12)

Ranjit Roy C/o, S.N. Ghosh & Associates, Advocates, "Seven Brothers' Lodge, P.O.-Buroshibatala, P.S. Chinsurah, Dist. Hooghly, Pin-712105.	Vs.	JCIT, Range-23, Hooghly Aayakar Bhawan, Hooghly, G.T.Road, Khadian More, P.O. Chinsurah, P.S. Chinsurah, Dist. Hooghly, Pin-712101.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGXPR 8914 P		
(Assessee)	..	(Revenue)

Assessee by : Shri Somnath Ghosh, Advocate

Respondent by : Shri Shankar Halder, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 23/01/2019

घोषणाकीतारीख/Date of Pronouncement : 29/03/2019

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee pertaining to assessment year 2011-12, is directed against an order passed by the learned Commissioner of Income Tax (Appeals)-6, Kolkata (in short the Id. CIT(A)], which in turn arises out of an penalty order passed by the Assessing Officer u/s 271D of the Income Tax Act, 1961 (in short the Act) dated 16.02.2015.

2. The solitary grievance of the assessee in this appeal is that the Id. CIT(A) erred in confirming the penalty of Rs. 4,50,000/- u/s 271D of the Act.

3. Brief facts qua the issue are that during the previous year relevant to the assessment year under dispute, the assessee had received an amount of Rs. 4,50,000/- on various dates from the funds of Ranjit Roy (HUF), his own H.U.F. , which consists a sum of Rs. 3.50,000/- as opening balance, thus sum of Rs, 8,00,000/-(4,50,000 + 3,50,000) was outstanding as on 31-03-2011. According to the Id. Assessing Officer, such acceptance of the amount of Rs. 4,50,000/- in cash from Ranjit Roy (HUF) had infringed the provisions of section 269SS of the Income Tax Act and accordingly, he imposed penalty of Rs. 4,50,000/- u/s 271D of the Act.

4. Aggrieved by the penalty order, the assessee carried the matter in appeal before Id. CIT(A), but without success. Aggrieved, the assessee is in appeal before us.

5. We have heard both the parties and perused the material available on record. We note that Ranjit Roy (HUF). of the appellant and the appellant is one and same person and as such. no amount had been actually transferred from one account to another account and as such, cannot be construed to be of the same genre as a 'loan' or 'deposit' for the application of section 271D of the Income Tax Act. 1961. It was also argued that these payments were genuine as the payee had confirmed such payments which had been accounted for in its books and as such, the mischief of section 271 D of the Act is inapplicable. It was also pleaded by the Id. Counsel before us that the assessee was in dearth of funds on the dates when such amounts were received. We note that the Id. CIT(A) has confirmed the penalty mainly on the reason that “..... *The appellant has not been able to demonstrate the urgency and the bona fide reasons of its case with evidence.*” We note that it is an accepted principle that the provisions of s. 269SS of the Income Tax Act. 1961 apply to loans/deposits taken from "any other person". The operative expression in the provision of s. 269SS of the Act is the concept of "any other person". However. this expression is not defined or explained in the statute itself. The expression "any other person" in the context of introduction of this

section means persons who are not intimately or not very closely connected to the assessee. Therefore, the active director of the assessee-company was clearly not covered by the expression "any other person" occurring in section 269SS [DILLU CINE ENTERPRISES (P.) LTD - VS- ADDL. C.I.T. (2002) 80 ITD 484 (HYD)]. In other words, the expression "any other person" appearing in s. 269SS of the Act means persons who are not closely connected with the assessee. We note that where transactions had taken place with closely related persons in the family. i.e. wife, minor children and H.U.F. and the genuineness of the transactions are not doubted, it was held that penalty could not be levied u/s. 271D of the Income Tax Act, 1961 [IT.O. -VS- SUNIL M. KASLIWAL (2003) 80 TTJ (PUNE) (TM) 1]. When one single individual is managing the affairs of two concerns and the decision to transfer the funds from one concern to another or to repay the funds could have been said to have been largely influenced by the same individual, it cannot be said that the transactions partake the nature of either deposit or loan [VIRAMBHAI RAMABHAI PATEL VS. JCIT (I.T.A. NO. 2230/AHD/12 DATED 22.03.2013)]. Thus, the acceptance of the financial accommodation from Ranjit Roy (HUF) by the assessee does not fall within the purview of provisions of s. 269SS of the Act as the appellant is acting in a dual capacity being the appellant himself as well as the Karta of his own H.U.F i.e. Ranjit Roy (HUF) and there being common control of funds with the assessee. Thus there is no infringement of the provision of s. 269SS of the Income Tax Act, 1961.

6. The ld. The ld. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity.

7. We note that in the instant case, undisputedly, the order imposing penalty u/s 271D of the Act was passed against the assessee for accepting financial accommodation in cash in the amount of Rs. 4,50,000/- from Ranjit Roy (HUF). We note that the approach of the ld. Assessing Officer in resorting to levy of the impugned penalty in the sum of Rs. 4,50,000/- is therefore thoroughly unfounded in the circumstances and based on unconnected considerations not relevant to the issue in dispute which is untenable in law and accordingly, such specious action in

that respect cannot survive for judicial scrutiny and the Id. Commissioner (Appeals) was absolutely wrong in upholding such impugned levy in a preposterous manner without appreciating the facts and circumstances of the instant case in the proper perspective and acted beyond the pale of law.

8. Our view is fortified by the judgment of the Co-ordinate Bench of this Tribunal in the case of Abhijit Saha in I.T.A. No. 198/Kol/2015 for assessment year 2009-10 order dated 24.05.2017 wherein it was held as follows:

“3. At the outset itself, the Ld. Counsel for the assessee Shri Somnath Ghosh stated that the penalty u/s. 271D read with section 269SS of the Act is not applicable to the facts of the case because the assessee accepted an amount of Rs. 7.80 lacs on account of temporary financial accommodation from his mother Smt. Alpana Saha. According to him, taking cash from mother/parent out of business expediency cannot attract penalty u/s. 271D r.w.s. 269SS of the Act. Ld. Counsel drew our attention to the Coordinate bench decision in Swapan Dutta Vs. JCIT, Range-2, Hooghly, reported in 2010 Tax L. R. 166, wherein it was held as under: “5. After hearing both the parties and perusing the material available on record and the case laws cited by the assessee, we find that in this case, admittedly, the money has come from the parents of the assessee. Therefore, the ratio laid down in the case of G. D. Subraya Sheregar v. I. T.O. (2006) 10 378 by the Bangalore Bench of this Tribunal is squarely applicable to the facts of this case, wherein contravention of provision of S. 269-SS was held to be not applicable in a transaction between a father and son. We further find that the fact that the assessee was in need of funds and took this money from his parents whose business was conducted by him on their behalf has not been disputed by the revenue before us. In such circumstances, there is a reasonable cause for taking money in cash from his parents out of business expediency. This view of ours is supported by the decision of Rajasthan High Court in the case of CIT Vs. Manoj Lalwani (2003) 260 ITR 590; (2003) Tax LR 290 (raj), wherein it was held that when loan in cash has been taken in view of urgent need connected with export, Tribunal was justified in deleting the penalty u/s. 271D. We also find force in the argument taken by the learned counsel for the assessee that assessee being a layman was not aware of the provisions of the Act as such, the default, if any, was attributable to ignorance of statutory provisions of the act. The assessee’s case finds support from the decision of the Delhi Tribunal in the case of Farrukhabad Investment (I) Ltd. V. JCIT (2003) 85 ITR 230 (Del) where the professional auditors, experts in the field of taxation, did not point out any violation of S. 269 SS of the Act, it was held that it would be too much to expect from the assessee to know these provisions and as such the penalty imposed was deleted considering ignorance to be a “reasonable cause”. In the instant case also, the auditors did not point out any violation of S. 269 SS of the Act. In view of the above, we are of the considered opinion that this is not a fit case in which penalty u/s. 271D can be levied. The penalty so imposed by the Assessing Officer and sustained by the learned CIT(A) is hereby deleted. Therefore, the appeal of the assessee is allowed.” 4. Since the facts of the case of the assessee is similar to that of the case

of Swapan Dutta (supra) and the Ld. DR could not point out any change in the facts or in law, since the facts of the assessee's case is similar to that of Swapan Dutta (supra), we are inclined to follow the decision of the Co-ordinate bench in the case of Swapan Dutta, supra and cancel the penalty levied u/s. 271D of the Act. Therefore, the appeal of the assessee is allowed."

Therefore respectfully following the decision of the Co-ordinate Bench in the case of Abhijit Saha (supra) on similar facts, as that of assessee, we cancel the penalty u/s 271D of the Act.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 29.03.2019

Sd/-
(A.T.VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 29/03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. Ranjit Roy
2. JCIT, Range-23, Hooghly
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches