

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5378/Mum/2017 (Assessment Year 2012-13)

Shilpi Mehra C/o. Jayesh Sanghrajka & Co. LLP, Chartered Accountants, Unit No. 405 Hind Rajasthan Centre D.S. Phalke Road, Dadar(E) Mumbai-400 014. PAN : ATFPS9865H (Appellant)	Vs.	ITO 26(3)(3) Mumbai. (Respondent)
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Assessee by	Shri Harshvardhan Datar
Department by	Shri Ashish Kumar
Date of Hearing	3.1.2019
Date of Pronouncement	27.3.2019

ORDER

Per Shamim Yahya (AM) :

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.6.2017 and pertains to A.Y. 2012-13.

2. Grounds of appeal read as under :-

1. *On given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in confirming the penalty levied under section 271 D of Income Tax Act, 1961 as the same is time barred as per provisions of Section 275 of Income Tax Act and hence the order levying the penalty is liable to be annulled.*

2. *Without prejudice to above, on the given facts, circumstances and judicial pronouncements; Ld. CIT (Appeals) has erred in confirming the penalty under section 271D levied by the Jt. CIT even though the same was for the bonafide purposes as per provisions of Section 273B of The Act.*

3. *Without prejudice to above, on the given facts, circumstances and judicial pronouncements; Ld. CIT (Appeals) has erred in confirming the penalty under section 271D levied by the Jt. CIT even though identity of*

the lender and borrower has duly been established and genuineness has been accepted by Ld. AO.

3. Brief facts during the assessment proceedings it was found that the assessee has obtained loan from M/s XL Marketing Prop. Sunil Mehra (her husband) in contravention of section 269SS of the Income-tax Act, 1961. The details of loan taken at different date are as under :-

Sr.No.	Date	F.Y.	Amount
1	01.04.2011	2011-12	Rs 30,000/-
2	01.04.2011	2011-12	Rs 5,00,000/-
3	02.05.2011	2011-12	Rs 2,00,000/-
4	03.06.2011	2011-12	Rs 2,00,000/-
5	09.08.2011	2011-12	Rs 27,500/-
6	10.08.2011	2011-12	Rs 30,300/-
7	11.08.2011	2011-12	Rs 11,460/-
8	11.08.2011	2011-12	Rs 2,50,000/-
		Total	Rs 12,49,260/-

Since, the assessee has taken the loan in cash in contravention to the provisions of section 269SS of the Act, a reference to initiate the proceedings u/s. 271D of the Act was made by the Assessing Officer. Since the assessee has obtained loan of Rs. 12,49,260/- in cash in violation of the provisions of section 269SS of the Act, penalty proceedings u/s. 271D were initiated and a show cause notice u/s. 271D dated 26.10.2015 was issued to the assessee which was duly served on the assessee. In response the assessee submitted that the assessee was not aware of the legal provisions. That the assessee was under belief that the aforesaid cash loans would not attract any penalty. However, the Assessing Officer disbelieved the assessee's submissions on the ground that assessee was an advocate. This finding of the Assessing Officer was vehemently contended before learned CIT(A). it was submitted that assessee had never submitted that she was an advocate.

4. However, learned CIT(A) also dismissed the various contentions of the assessee and the case laws relied upon and upheld the levy of penalty.

5. Against the above order, the assessee is in appeal before us.
6. We have heard both the counsel and perused the records. Learned Counsel of the assessee submitted that assessee was under bonafide belief that small amount of cash loan taken from her husband would not invite the rigours of penalty provisions. In this regard he placed reliance upon provisions of section 273B which provide that penalty need not be levied if the assessee cogently proves a reasonable cause for the infraction of law inviting provisions of section 271D of the Act.
7. Per contra learned DR relied upon the orders of the authorities below.
8. Upon careful consideration we find that the assessee has taken small amounts of cash loan from her husband on different occasions. The reasonable cause attributed by the assessee is that since the loan was from husband and assessee was not aware of the provisions in this regard the cash loan was taken. Hence, on the touchstone of section 273B assessee seeks relief from penalty under section 271D. In this regard we note that the Assessing Officer has not at all applied his mind to the assessee's submission as he has noted that assessee was an advocate, which the assessee has vehemently submitted to be wrong. In our considered opinion the reasonable cause attributed that since that assessee was not aware of the provisions, she was under bonafide belief that cash loans taken from husband would not invite the rigours of penalty provisions. In our considered opinion this can constitute a reasonable cause u/s. 273B warranting that the assessee may not be visited with the rigours of penalty u/s. 271D. In this regard we draw support from Hon'ble Apex Court decision in the case of Hindustan Steel Vs. State of Orissa (83 ITR 26) wherein it was held that in case of technical and venial breach the authority may not visit the assessee with the rigour of penalty. Accordingly, in the background of aforesaid discussion and precedent we set aside the orders of authorities below and delete the levy of penalty.

9. In the result, appeal filed by the assessee is allowed.
Order has been pronounced in the Court on 27.3.2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/3/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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