

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7792/Del/2018
Assessment Year: 2012-13

Sonia Malik,
229, Ground Floor,
Avtar Enclave, Paschim Vihar,
New Delhi.

Vs. JCIT,
Range-69,
New Delhi.

PAN: ANQPM9150J

(Appellant)

(Respondent)

Assessee by	:	Shri Pramod Jain, FCA
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	06.05.2019
Date of Pronouncement	:	10.05.2019

ORDER

This appeal by the assessee is directed against the order dated 6th Septemfebr, 2018 passed by the CIT(A)-21, New Delhi, relating to Assessment Year 2012-13.

2. The assessee in various grounds has challenged the order of the CIT(A) in sustaining the penalty of Rs.3,25,000/- levied by the JCIT u/s 271D of the IT Act.

3. Facts of the case, in brief, are that the assessee is an individual and derives salary income from Sant Nirankari Public School, New Delhi and 'Income from other sources.' She filed her return of income on 18th December, 2012 declaring the total income of Rs.2,34,320/-. The Assessing Officer completed the assessment

determining the total income at Rs.34,12,062/- wherein he disallowed a part of the long-term capital gain claimed by the assessee u/s 54F of the IT Act apart from making addition of Rs.57,538/- on account of interest and Rs.8,160/- under the head 'Salary.' During the course of assessment proceedings, the Assessing Officer noted that the assessee had taken cash loan of Rs.1,25,000/- from Shri Darshan Singh Gujral, Rs.1,00,000/- from Smt. Joginder Kaur and Rs1 lakh from Shri Gurdeep Singh Gujral and, therefore, she has violated the provisions of section 269SS. On the basis of this information, the JCIT initiated penalty proceedings u/s 271D of the Act by issue of penalty notice which was duly served on the assessee. It was submitted by the assessee that she had taken cash loan of Rs.1,25,000/- from her father Shri Darshan Singh Gujral, Rs.1,00,000/- from her mother Smt. Joginder Kaur and Rs.1 lakh from Shri Gurdeep Singh Gujral. Since the assessee was not having sufficient funds to pay the stamp duty, considering the immediate need of funds, she had asked them for help. Relying on various decisions, it was submitted that since the assessee was in the urgent need of funds and was helped by her parents and brother, therefore, there was a reasonable cause on the part of the assessee for the failure as provided u/s 273B of the Act and, therefore, penalty u/s 271D is not applicable. However, the JCIT was not satisfied with the arguments advanced by the assessee and held that the penalty u/s 271D is clearly attracted since the assessee has violated the provisions of section 269SS of the Act and the assessee failed to prove any reasonable cause. He, therefore, levied penalty of Rs.3,25,000/- u/s 271D of the IT Act.

3.1 In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

6) Decision

I have carefully considered the written submissions of Id.AR and penalty order passed by Jt. CIT. From the penalty order, it is evident that Assessing Officer is of the view that assessee failed to demonstrate any reasonable cause for accepting the cash loan from his father, mother and brother to the extent of Rs.3,25,000/-. The provisions of section 271D are specific which provide if a person takes or accepts any loan or deposit 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 so taken to accepted. However, from the submissions of the appellant, it is evident that she has accepted the cash loans from her father, mother and brother as she has to make payment towards the stamp duty of house property purchased by her for which she was lacking fund. The submissions made during appellate stage that amount in question is not a loan but a financial help as appellant is not required to pay back the amount is not found to be convincing in the absence of any confirmation from respective donor / payee - there is simple assertion made by the appellant/AR without any evidence in support. As per specific provisions of Act, case of the appellant does not come under the purview of exception clauses mentioned in the provisions appended to section 269SS of the Act, therefore, plea of the assessee that since amounts have been accepted from persons in the blood relation above provisions are not applicable, does not found any merit. The case laws relied upon by the appellant are distinct and not found to be applicable in the instant case. It is pertinent to mention here that appellant in the instant case has failed to demonstrate any reasonable cause - submissions of the appellant that money was required and provided by her relatives on the date of making payment towards purchase of stamp duty does not found to be of any help since from the circumstances involved bonafide and reasonable cause of the appellant do not exist. Had there was any immediate and bona fide need of money, appellant could have taken the amounts through banking channel which easily could be withdrawn from bank, but appellant did not exercise this option. Fact also, cannot be denied that property transaction is not completed in a day or two but it takes substantial time and purchaser takes stock of his / her resources while finalizing the deal and if there was real need / shortage of fund, appellant could have taken the money well in advance through banking channel. Acceptance of cash whether from blood relation is not allowable or falling in the exceptional clause of section 269SS. Therefore, no interference is called for to the action of the Assessing Officer in imposing penalty, which is confirmed.”

4. Aggrieved with such order of the CIT(A), the assessee in appeal before the Tribunal.

5. The ld. counsel for the assessee submitted that during the course of assessment proceedings, the assessee had produced the confirmations from the parents and brother of the assessee which were accepted by the Assessing Officer and no addition on this account was made. Further, these transactions were done with the family members for purchase of a property and the amount was acquired for a very genuine cause for the payment of the stamp duty towards purchase of a house for personal use. The assessee was under the *bona fide* belief that there was no breach of any provision of law and there was no intention of the assessee to evade tax. Referring to the decision of the Hon'ble Madras High Court in the case of *CIT vs. M. Yeshodha reported in 351 ITR 265 (Mad)*, he submitted that the Hon'ble High Court in the said decision has held that transaction of loan between father-in-law and daughter-in-law in cash cannot be subject matter of levy of penalty u/s 271D of the Act. Referring to the decision of the Hon'ble Punjab & Haryana High Court reported in *CIT vs. Sunil Kumar Goel reported in 315 ITR 163*, he submitted that the Hon'ble High Court in the said decision has held that 'A family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273 B of the Act. Since the assessee had satisfactorily established 'reasonable cause' under section 273B of the Act, he must be deemed to have established sufficient cause for not invoking the penal provisions of sections

271D and 271E of the Act against him. The deletion of penalty by the Tribunal was valid.’ Referring to the decision of the Hon'ble Rajasthan High Court in the case of *CIT vs. Manoj Lalwani reported in 260 ITR 590*, he submitted that the Hon'ble High Court in the said decision has held that when the loan in cash has been taken in view of urgent need connected with export, Tribunal was justified in deleting the penalty u/s 271D of the IT Act. Referring to the decision of the coordinate Bench of the Tribunal in *Sunil Kumar Sood vs. Jt. CIT in ITA No.1831/Del/2016, order dated 20.06.2018*, he submitted that the Tribunal in the said decision has deleted the penalty levied u/s 271D of the IT Act holding that when the assessee has taken the loan from his wife for the purchase of house which is for the benefit of the whole family, penalty levied u/s 271D of the Act is not justified. He also relied on the following decisions:-

- i) DCIT vs. Banarasi Dass Mittal, ITA No.110/Del/2017, dated 28.08.2017.
- ii) ITO vs. Lakshmi Vishwanath dated 06.11.2017, ITA No.3869/Del/2017
- iii) ACIT vs. Inderpal Singh Wadhawan, ITA No.2252-2253/Del/2013, dated 16.01.2015
- iv) Addl.CIT vs. Shri Vharan Singh Yadav, ITA No.3725/Del/2009, dated 18.12.2009.
- v) Tuhinara Begum Hoogly vs. Jt. CIT, ITA No.2256/Kol/2014, dated 04.10.2017.
- vi) Sri Nikhil Banik Mazumdar vs. Jt. CIT, ITA No.453/Kol/2016, dated 10.01.2018.

- vii) Snehlata Sitani vs. Jt. CIT, ITA No.862/Kol/2018, dated 24.04.2019.
- viii) Anant Himatsingka vs. Addl.CIT, ITA Nos.331 & 332/Kol/2010 dated 25.11.2011.
- ix) Manisha Prakash Amin vs. Jt. CIT, ITA No.1839/Kol/2010 dated 24.05.2011.
- x) Ashok Kumar Bagaria vs. Jt. CIT, ITA No.1531/Kol/2014, dated 05.04.2019.
- xi) Dr. B.G. Panda vs. DCIT (2000) 111 Taxman 86 (Cal)
- xii) Girishkumar Popatlal vs. Jt. CIT, ITA No.3072-3073/Ahd/2016
- xiii) ITO vs. Tarlochan Singh (2003) 128 Taxman 20 (Mag)
- xiv) Shri Sanmathi Ambanna vs. Jt. CIT, ITA No.782/Bang/2017, dated 02.01.2019.
- xv) Vikram Sood vs. Addl. CIT, ITA No.1487/Chd/2012, order dated 03.01.2019.
- xvi) Akbar Mohamedali Kazi vs. Jt. CIT, ITA No.1406/Mum/2017, dated 07.03.2019.

6. He submitted that in the above cases, the penalty levied u/s 271D was cancelled where the transactions took place between close family relations. He accordingly submitted that the penalty levied by the JCIT and upheld by the CIT(A) should be deleted.

7. The ld. DR, on the other hand, strongly supported the order of the CIT(A). He submitted that the assessee in the instant case, has clearly violated the provisions of section 269SS. There was no urgent need for taking the loan in the shape of cash and

the assessee could have taken the loan by account payee cheque or bank draft. Since the assessee has violated the provisions of section 269SS and did not show any reasonable cause, therefore, the order of the CIT(A) being in accordance with the law should be upheld.

8. I have considered the rival arguments made by both the sides and perused the relevant material on record. I have also considered the various decisions cited before me. It is a fact that the assessee during the impugned assessment year has accepted cash loan of Rs.3,25,000/- from her parents and brother i.e., Rs.1,25,000/- from father Shri Darshan Singh Gujral, Rs.1,00,000/- from her mother Smt. Joginder Kaur and Rs.1 lakh from Shri Gurdeep Singh Gujral. The capacity of the loan creditors is not in dispute since the Assessing Officer in the body of the assessment order has accepted such loan. However, the JCIT levied penalty of Rs.3,25,000/- u/s 271D on the ground that the assessee has accepted cash loan in violation of the provisions of section 269SS and there was no urgency in accepting such cash loan for which there was no reasonable cause. It is the submission of the ld. counsel that she has accepted cash loan from her parents and brother to meet the cost of stamp duty required for purchase of a property. It is the case of the ld. counsel for the assessee that the assessee was under bona fide belief that there was no breach of any provision of law and there was no intention of the assessee to evade tax. Further, there was a reasonable cause on the part of the assessee to accept such cash loan since it was

required on the day of registration to meet the payment of stamp duty on purchase of the house.

9. I find some force in the argument of the ld. counsel for the assessee. It is an admitted fact that the transaction took place between the assessee and her parents and brother. Their credit worthiness is not in dispute. The Hon'ble Madras High Court in the case of CIT vs. M. Yeshodha (supra) has held that 'the transaction of loan between father in law and daughter in law in cash cannot be subject matter of levy of penalty u/s 271D of the Act. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sunil Kumar Goel (supra) has held that 'a family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273 B of the Act' and, therefore, the provisions of section 271D are not applicable. The Hon'ble Rajasthan High Court in the case of CIT vs. Manoj Lalwani (supra) held that when the loan in cash has been taken in view of urgent need connected with export, Tribunal was justified in deleting the penalty u/s 271D of the IT Act. The Delhi Bench of the Tribunal in the case of Sunil Kumar Sood vs. Jt. CIT (supra) held that where the assessee has taken loan from his wife for the purchase of house which is for the benefit of the whole family, penalty levied u/s 271D of the Act is not justified. Various other decisions relied on by the assessee in the synopsis also supports her case wherein under identical circumstances where the assesseees had received loans in cash from close family relations, penalty levied u/s 271D was deleted. Since the assessee, in the instant case,

has received cash loan from her parents and brother to meet the stamp duty cost for purchase of a house property for her own living, therefore, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271D of the Act and the provisions of section 273B will come to the rescue of the assessee as a reasonable cause. I, therefore, set aside the order of the CIT(A) and direct the JCIT to delete the penalty. The grounds raised by the assessee are accordingly allowed.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 10.05.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 10th May, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi