

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.169/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2011-12)**

Sri Mallidi Bhupathi Reddy
D.No.1-94/1
Near Ganesh Temple
Ravulapalem

Vs. Joint Commissioner of
Income Tax
Range-2
Rajahmundry

[PAN : AQVPM6730E]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 06.09.2019

घोषणा की तारीख/Date of Pronouncement

: 25.09.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Rajamahendravaram in I.T.A.No.10089/2015-16/CIT(A)/RJY dated 15.02.2019 for the Assessment Year (A.Y.) 2011-12.

2. In this case, the Joint Commissioner of Income Tax ('JCIT' in short), Range-2, Rajahmundry has received information from ITO, Ward-2, Amalapuram {Assessing Officer (AO)} that the assessee had received a sum of Rs.15.00 lakhs as loan otherwise than account payee cheque in violation of provisions of section 269SS of the Income Tax (in short 'Act'). Therefore, the JCIT, has initiated penalty proceedings u/s 271D of the Act and accordingly issued show cause notice calling for the explanation of the assessee as to why the penalty should not be levied against him for accepting the cash loan in violation of section 269 SS of the Act. In response to the notice issued by the JCIT, the assessee filed explanation stating that he had accepted the loan from his wife Smt.Mallidi Radha on 22.03.2011 for purchase of machinery due to business expediency. Since the loan was received from his wife for business purposes, the assessee requested to drop the penalty proceedings as the loan was from closely related person and the source was explained in her hands. The JCIT, not being convinced with the explanation of the assessee levied the penalty u/s 271D r.w.s.296SS of the Act observing that the acceptance of loan in cash whether for the purpose of capital asset or revenue purpose attracts the provisions of section 269SS of the Act, accordingly levied penalty of Rs.15.00 lakhs.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the penalty stating that there was acceptance of loan in cash otherwise than by cheque, accordingly dismissed the appeal of the assessee.

4. Against the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR argued that there is no doubt with regard to the genuineness of the loan and the sources for giving the loan were explained in the hands of the creditor. No unaccounted money was involved in this transaction. The loan was taken from his wife due to business expediency and the creditor, Smt. Mallidi Radha is an income tax assessee and assessed to income tax with PANo. BJNPM6946E with ITO, Ward-3, Rajahmundry. Since the loan was accepted from his wife, the Ld.AR requested to cancel the penalty and allow the appeal of the assessee. The Ld.AR referring to the order of this Tribunal in the case of Penmetsa Venkata Soma Raju in I.T.A. No.632/Viz/2013 dated 31.07.2017 submitted that in the similar circumstances, this Tribunal has held that in genuine family transactions, levy of penalty u/s 271D is not proper and argued that since the loan was taken from his wife and she is also assessed to tax and the source was duly explained in her hands, genuineness is

established and there is no black money involved in the instant case. Therefore, argued that lenient view is required to be taken in the facts and circumstances of the case. Accordingly, requested to set aside the orders of the lower authorities and allow the appeal of the assessee.

5. We have heard both the parties and perused the material placed on record. In this case, the assessee is carrying on business of purchase and sale of liquor and hiring of excavators. For the purpose of purchase of machinery, the assessee has taken loan from his wife Smt.Mallidi Radha on 23.02.2011 for business purposes. There is no dispute that the source was explained in the hands of his wife. The AO did not doubt the genuineness of the loan as well as the sources of the loan. The transactions of gifts between the close relatives are exempt from the tax u/s 56(2) of the Act. The sums received exceeding twenty-five thousand rupees without consideration by an individual are exempt from taxing it from other sources as provided in the proviso to section 56(2)(v) of the Act which shows that in case of genuine and bonafide transaction between close relatives required to be taken a lenient view. In the instant case, the wife has given a loan to the assessee (husband) who is carrying on the business and the transaction was between the assessee and his wife. The business is

carried on in the interest of family and it is the responsibility of both wife and husband to run the family and to share the responsibilities of the family. When the gift between the close relatives are not taxed under section 56(2) we are of the view that genuine loan transaction also needs to be considered in favour of the assessee. In similar facts and circumstance, the ITAT in the case of Penmetsa Venkata Soma Raju supra deleted the penalty levied by the AO. For the sake of clarity and convenience, we extract para No.10 to 13 of the order of this Tribunal cited supra.

"10. *Under similar circumstances, the coordinate bench of the tribunal in the case of **Bh. Harshavardhana Raju** (supra), has considered the scope of section 269SS and held as under:-*

"6. We have heard the rival contentions and carefully perused the record. The undisputed facts are that the assessee was a student at the relevant point of time and the year under consideration was his 2nd year's return of income. It is also not disputed that all the affairs of the assessee as well as other family members are looked after by his grandfather. The assessee has filed contra account copies of the impugned transactions and the same are placed in pages 8 to 11 of the paper book compiled by the assessee. These account copies show that the amounts ranging from Rs.17,000/- to Rs.19,000/- have been transferred from the account of the family members on various dates to the account of the assessee. The amount so transferred on each occasion did not exceed Rs.20,000/- and the same vindicates the submission of the assessee that his grandfather was under bonafide belief that such kind of transfers are permissible under the Act. On such a belief only, the funds available with the other family members appear to have been transferred to the account of the assessee on various dates. The learned CIT (A) has also considered this aspect while deleting the impugned penalty. For the sake of convenience, we extract below the decision of the learned CIT (A):

"5.4 Applying the afore-stated factors and circumstances in the appellant's case, it could be observed that the

appellant is an absentee assessee whose tax matters are being looked after by his paternal grandfather, who appears to have either no knowledge or semi knowledge of the provisions of the Act relating to transactions involving acceptance and repayment of loans and deposits in cash exceeding the prescribed limit of Rs.20,000/-. No doubt, such grand father of the appellant along with other members of his family including the appellant were not the first time assesseees but had been enrolled as assesseees from the earlier years, and, perhaps, might have obtained the services of any tax practitioner in filing their past returns. But then sometimes, it so happens that the assesseees tend to undertake transactions in certain situations with their limited knowledge of the legal provisions and procedure, without, realizing that their misplaced action could be leading to defaults, thereby attracting penal provisions. In the instant case, it appears to be such a case of miscalculated adventure resulting in default under section 269SS of the Act on the part of the appellant. Since there is no doubt about the fact that the appellant himself, on account of his pursuance of studies outside his native place, had no direct role to play in the method and mode of transaction in augmenting funds for the purpose of investment in his name, he cannot be entirely blamed for the default committed by his grandfather on his behalf. Having regard to the totality of the facts and circumstances of the case, it can be said that there existed a reasonable cause on the part of the appellant in committing default in accepting cash loans exceeding the prescribed limit from his family members in contravention of the provisions of the section 269SS of the Act. Accordingly, the appellant deserved a lenient view on the issue and, consequently, penalty under section 271D of the Act in his case was not exigible. Hence, the order levying penalty of Rs.9,39,000/- under section 271D of the Act is, hereby, cancelled".

Thus, we notice that the Learned CIT(A) has taken into consideration the fact that the assessee, being a student studying outside his native place, had no direct role to play in the method and mode of transaction in augmenting funds for the purpose of investment in his name. Further the impugned amounts have been received only from the close relatives of the assessee. In these circumstances, the explanation of the assessee that these transactions have been entered into with a bonafide belief that there will be no violation of the provisions of sec. 269SS of the Act, can be taken as a reasonable cause. Hence we do not find any infirmity in the decision of Learned CIT(A) and accordingly uphold his order."

11. *In the case of G. Narasinga Rao (supra) the Tribunal has considered the scope of section 269SS and held as under:-*

6. *Having heard the rival submissions and from a careful perusal of record, we find that there is a family loan and the assessee has*

constructed the property which is used by the assessee and his son for which he took a loan from his son for the purchase of various raw materials. We have also examined the order of the Tribunal in the case of Vanamadi Satyanarayana, Kakinada Vs. ACIT (supra) and we find that Tribunal has examined this issue of loan from the family members and have concluded that in case of family transactions, bonafide of the assessee should not be doubted. The observation of the Tribunal for the sake of reference are extracted hereunder:

“Having heard the rival submissions and from a careful perusal of the orders of the lower authorities the judgments referred to, we find that the assessee has taken a loan without interest from his father and his wife when he was burdened with the obligation of borrowed funds of the outsiders. In the case of CIT Vs. Sunil Kumar Goel (supra) the Lordship of Punjab & Haryana High Court has held that family transactions between two independent assesseees based on an act of casualness, especially in a case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, establishes “reasonable cause” u/s 273B for not invoking the penal provisions of section 271D and 271E. The relevant observations of the Punjab & Haryana High Courts are extracted hereunder for the sake of reference:

“The Tribunal was right in recording its conclusion that a “reasonable cause” had been shown by the assessee. The Tribunal relied on the fact that the assessee had produced his cash books, depicting loans taken by him unilaterally before the Revenue in the instant action of the assessee in as much as the assessee did not attempt by the impugned act to avoid any tax liability. Furthermore, there is no dispute about the fact that the instant cash transactions of the assessee were with the sister concern, and that, these transactions were between the family, and due to business exigency. A family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, establishes “reasonable cause” under s. 273B. Since the assessee had satisfactorily established “reasonable cause” under s. 273B, he must be deemed to have established sufficient cause for not invoking the penal provisions (ss. 271D and 271E of the Act) against him.”

In the case of Star Electroplaters Vs. ITO (supra), the Tribunal has taken a view that the assessee having accepted loans in cash mainly from the party for whom it was doing job work to meet its business exigencies after making huge investment in fixed assets, there was no willful neglect of law on the part of assessee and therefore the penalty u/s 217D was not justified. In the case of Sharda Educational Trust Vs. ACIT (supra), the Tribunal has examined the circular no.387 dated 6.7.84 issued by the CBDT and has held that the object of introduction for provisions of section 269SS and 269T was to curb the transaction of black money. It should not be invoked for a venial breach or technical default.

From a careful perusal of the aforesaid judgements, we are of the view that provisions of section 269SS and 269T were introduced with the intention to curb the transactions of the black money. While levying a penalty u/s 271D one has to examine the surrounding circumstances under which the loan in cash was obtained by the assessee. In case of family transactions, the bonafide of the assessee should not be doubted as held in the case of CIT Vs. Sunil Kumar Goel (supra). In the instant case, assessee has made out a case that the family loan was obtained to clear the loan liabilities of the outsiders and Revenue has not placed anything on record to falsify the claim of the assessee. Under the given facts and circumstances of the case, we are of the view that the invocation of provisions of section 271D is not proper. We therefore, following the aforesaid judgements set aside the order of the CIT(A) and delete the penalty.

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

7. *Since the Tribunal has taken a particular view in a similar set of facts we find no reason to take a contrary view in this appeal. We therefore following the aforesaid order of the Tribunal hold that under the given circumstances penalty in the instant case is not sustainable in the eyes of law. We therefore set aside the order of CIT(A) and delete the penalty.”*

12. *In the case of **Dr. Dutta Siva Sankara Rao** (supra) the coordinate bench of the tribunal has held as under:-*

“3. *Having heard the rival submissions and from a careful perusal of record we find that the assessee has taken a loan in cash but it was from his close relatives. Similar is the positions with regard to its*

payment. Now the question posed before under section is; whether it was done under a bonafide belief? And if it is done under a bonafide belief, whether assessee is entitled for benefits of section 273B of the I.T. Act, according to which no penalty shall be imposable on the assesseees as the case may be for any failure referred to the different provisions mentioned in this section if it proves that there was reasonable cause for the said failure. The facts of the case are examined in the light of this provision and we find that since the assessee has taken a loan from his close relatives without realizing the legal complications, he should be given a benefit of this section. We accordingly of the view that the assessee had a reasonable cause for not obtaining the loan, through cheque and transacting in cash with his close relatives. Accordingly, the penalties levied u/s 271D & E are not attracted. We therefore, set aside the order of the Id. CIT(A) and delete the penalty levied under section 271D & E of the I.T. Act.

13. *Keeping in view of the facts and circumstances of the case and also by considering the case-laws as referred to above, we are of the opinion that section 269SS, has no application to the facts of the present case. Therefore, we find no infirmity in the order of the Id.CIT(A)."*

6. Similar issue was considered by the coordinate bench of ITAT,Jaipur bench in Smt. Kusum Dhamani.v. Additional Commissioner of Income-tax, Range-5, Jaipur, [2014] 47 taxmann.com 143 (Jaipur - Trib.) and held that Where assessee running a proprietorship concern, took cash **loans** from her **husband** carrying on another proprietorship business on account of business exigencies for making payments to labourers and lenders, there being no violation of provisions of section 269SS, impugned **penalty** order passed under section **271D** was to be set aside. For the sake of clarity we reproduce the relevant para of the order of the coordinate bench in Smt. Kusum Dhamani as under:

“4. We have heard the rival submissions and perused the relevant material available on record. From the record there is no shred of doubt about the genuineness of the transactions and their disclosure in the books of account and returns of both the assessee who happen to be husband and wife, carrying on the business as sister concerns. Section 271D read with Section 269SS was introduced by the legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. The assessee has given an explanation in our view is not unreasonable and is based on business exigencies also for payments to labourers and lenders. Under these circumstances, we are of the view that the transactions being genuine and the assessee having offered reasonable explanation justifying these cash transactions, the impugned penalty u/s 271D is not leviable. Our view is fortified by the judgement of Hon'ble Jurisdictional High Court in the case of Raj Kumar Sharma (supra) and the judgement of Hon'ble Punjab & Haryana High Court in the case of Saini Medical Store (supra) which is followed by Hon'ble P & H High Court in the case of Sunil Kumar Goel (supra). Thus in view of the facts and circumstances of the case and the decisions relied on above, the penalty is deleted.”

In the instant case, the assessee has taken a loan from his wife due to business expediency and the AO has not doubted the genuineness and the sources of the loan. Therefore, respectfully following the view taken by this Tribunal and the decision of coordinate Bench in the case of Smt. Kusum Dhamani (supra) we hold that the penalty is not leviable in this case and accordingly, we set aside the orders of the lower authorities and delete the penalty.

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

Order pronounced in the open court on 25th September, 2019.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 25.09.2019 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Sri Mallidi Bhupathi Reddy, D.No.1-94/1, Near Ganesh Temple, Ravulapalem
2. राजस्व/The Revenue - Joint Commissioner of Income Tax, Range-2, Rajahmundry
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals), Rajamahendravaram
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam