

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA*

Before **Shri P.M.Jagtap, Vice-President** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1088/Kol/2018**  
Assessment Year:2009-10

Sri Plaban Kumar Basu C/o Economic Electric Co. Monimart, G.T. Road, Burdwan-713101 [PAN No.AEIPB 5027 J]	बनाम/ V/s.	Income Tax Officer, Ward-1(1), Aayakar Bhawan, a Court Compound, Burdwan- 713101
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Goutam Kr. Mondal, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	21-11-2019
घोषणा की तारीख/Date of Pronouncement	27-11-2019

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2000-10 arises against the Commissioner of Income Tax (Appeals)-Burdwan's order dated 27.03.2018, passed in case No.210/CIT(A)/Asl/JCIT/R-1/Bwn/2014-15 involving penalty u/s 271D of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges both the lower authorities' action imposing u/s 271D r.w.s. 269SS

penalty(ies), in case of alleged loans availed from family-members. The CIT(A) has affirmed the impugned penal action as follows:-

*“3. निणय/Decision:*

*All the grounds relate to the lone effective issue of levy of penalty under section 271D of the IT Act of an amount of Rs.250,000 made by the AO. During the course of assessment proceedings, the AO observed from the Cash book and Ledger for the period 01.04 .2009 to 31.03.2010 that the appellant has accepted loans from Renuka Basu and Mala Basu for sums exceeding the limits specified in section 269 55 of the IT Act otherwise than through account payee cheque or account payee draft. Accordingly penalty proceedings under section 271D were initiated. During the penalty proceedings, the appellant vide its submission dated 18.12.2013 stated that the amounts represented cash gifts received from his wife and mother. However, vide his submission dated 15.01.2014 the appellant has accepted that the impugned sums were cash loans. He further admitted that these loans were reflected in the creditors' P&L account. It was further submitted that as on each occasion the transactions were less than Rs 20,000, the appellant was under the impression that the same were not prohibited under section 26955 of the IT Act. The Joint Commissioner, after considering the appellant submissions, did not accept the same and proceeded to levy penalty under section 271 D for violation of the provisions under section 26955 of the IT Act. During the appellate proceedings, the appellant reiterated its submissions made before the lower authorities. The appellant's contentions were carefully considered from all angles.*

From the appeal records I observe that in the Cash book and Ledger for the relevant previous year, the appellant has treated the sum is accepted as loan. It is also an undisputed matter as coming out from the penalty order that vide the submission dated 15.01.2014 filed during the penalty proceedings, the appellant has categorically stated that he has accepted the cash as loans from his mother and his wife on different dates in sums below Rs 20,000 on each occasion. It is also undisputed till date that such sums has been reflected as loans in the creditors 'P&L account. On the face of such overwhelming evidence in the nature of accounting treatment made in both creditors' and recipients' accounts in a congruous manner, the submission of the appellant that the sums were gifts received from wife and mother and was recorded inadvertently as loans by the accountant is not acceptable and without any factual basis. The appellant has also not submitted any evidence as to how the entries in respect of the loans, even though they had been recorded incorrectly by the accountant is claimed, have been ultimately corrected. It is also noteworthy to mention that the appellant has not come out with any submission with respect to the occasions which warranted such receipt of gift. Had it been a case of gift for necessity, it is to be expected that the same need be gifted to the party on an occasion or two. However, in this particular instance, it is observed that the transactions have been done at periodic intervals on 7 occasions almost spanning the entire year. And not only is it so, but it extended

to the succeeding financial year wherein the appellant has received a loan of a lakh of rupees each from the same 2 parties. It is also noteworthy to mention that on each occasion, in all the 14 transactions from both the parties, the sum so received were less than Rs.20,000. That the appellant has not received an interest or paid any is immaterial as the loan may be non-interest-bearing. The appellant has not submitted any gift deed in support of its claim that the transactions were gifts. The submission made before the Joint Commissioner during the penalty proceedings by the wife of the assessee, one of the creditor parties to the transaction, that Seagate the sum of Rs 140,000 as gift to the appellant is also without any signature and has no validity. Seeing all the facts and circumstances of the case, I come to the conclusion that the transaction was not in true sense a gift out of love and affection but loan simpliciter as recorded in the books of both the parties. It is submitted that the true creditor parties were not having any bank accounts and therefore the sums were received in cash. The appellant has not submitted any corroborating evidence in support of the same. However, I notice that the two creditors ran a partnership firm styled M/s Mala Basu & Renuka Basu and earning business profits. The appellant himself has submitted that the sums received were from the profit earned from the said firm. In such circumstances, circumstantial evidence suggests that the firm must be having its account and the partners must be credited from that account to their individual accounts. However, the appellant has not produced any proof that actually the parties did not have any bank account by submitting their returns of income, their account books, firms books evidencing the credit of partners profit et cetera. It is also submitted that the appellant was under the impression that individual transactions being less than Rs.20,000 do not come under the mischief of the provision of section 269S5 of the IT Act. However, I observe there has been never any dispute with respect to the provisions of the said section in respect of this matter and the appellant has also not produced any case law with respect to any point of debate on this facet of the issue. The law is quite clear and the section is crisply worded vide sub section (b) of section 269SS that on the date of taking or accepting such loan or deposit, any loan or deposit taken accepted earlier, the amount of the aggregate amount remaining unpaid .... for the purpose of counting limit of Rs 20,000 for the said section. In view of the above, the undersigned reaches in an unequivocal conclusion that the appellant deliberately took the sums under Rs 20,000. The aggregate amount of the cash loan taken was in complete violation and breach of the provisions of section 269SS. There is no attenuating circumstances or reasonable cause which necessitated such conduct on the part of the appellant. And, when the revenue detected such trespass of law, the appellant tried to masquerade the loans as gifts and feigned ignorance of law instead of accepting such transgression plainly. All these tantamount to the contumacious conduct which fall very much under the mischief of the provision of section 271D of the IT act necessitating imposition of penalty. The undersigned is therefore constrained not to accede to the request of the appellant to give him any relief. The penalty order need not be interfered in the same is confirmed. Appellant's grounds fail.

## 4. निष्कर्ष/Conclusion:

परिणाम स्वर्ण आपील खारिज की जाती हैं /In the result, the appeal is treated as “dismissed.”

3. We have given our thoughtful consideration to rival contentions. The assessee has admittedly availed loans in cash from his mother and wife, Smt. Mala Basu and Renuka involving sums of ₹1.20 lakh and 1.30 lakh; respectively. There is further no quarrel that the same exceed the threshold limit of ₹20,000/- u/s 269SS, in the relevant previous year. The assessee explained before the Assessing Officer that these two sum(s) were in fact gifts from family-members mistakenly shown as loan by the auditor. The Assessing Officer declined the all these pleadings in his penalty order dated 30.06.2014. He held that the assessee’s impugned cash loan transactions exceeding Rs.20,000/- indicated a motive to avoid defection without involving any reasonable cause. He thus imposed the impugned penalty of ₹2.50 lakh u/s. 271D of the Act affirmed in the CIT(A)’s order under challenge.

4. Learned counsel vehemently contends during the course of hearing that both the lower authorities have erred in law as well as on facts in imposing the impugned u/s 271D penalty in respect of two cash loans/ gifts sums in case of mother and wife; respectively. His case accordingly is that the clinching fact of the said two parties turning out as family-members itself forms a reasonable cause for not levying the impugned penalty. The Revenue strongly submits on all the lower authorities’ action invoking the impugned penalty. We find no reason to sustain the penalty in issue. The fact remains that the two sum(s) in question of ₹1 lakh and 1.30 lakh have come from assessee’s mother and wife; respectively. Case law (2008) 303 ITR 5 (Guj) *Commissioner of Income Tax Vs. Natvarlal Purshottamdas Parekh* holds that such kind of amount(s); which are mere book entry transactions on behalf of family-members does not violate the provision of sec. 269SS and 269T. Hon'ble Madras high court in *Commissioner of Income Tax vs. Idhayam Publications Ltd.* (2006) 285 ITR 221 (Mad) also holds that such transactions between sister concerns having common directors in running account also does not attract the impugned penal provision. We

take into account all these facts to conclude that the learned lower authorities have erred in penalizing the assessee on account of cash loans availed from his mother and wife in issue. The penalty in question stand deleted accordingly.

5. This assessee's appeal is allowed.

Order pronounced in open court on 27/11/2019

Sd/-  
(उपाध्यक्ष)  
(P.M.Jagtap)  
Vice President

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
Judicial Member

\*Dkp-Sr.PS

दिनांक:- 27/11/2019 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sri Plaban Kr. Basu, C/o Economic Electric Co. Monimart,  
G.T. Road, Burdwan-713101
2. प्रत्यर्थी/Respondent-ITO Ward-1(1), Aayakar Bhawan, Court Compound Burdwan-
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।