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

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

ITA No.398/Kol/2019
(Assessment Year: 2013-14)

Auto Fuel Centre C/o. SN Ghosh & Associates, Advocates, "Seben Brothers" Lodge, P.O. Buroshibtala, P.S Chinsurah, Dist-Hooghly.	Vs.	**JCIT, Circle-1, DGP**
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AALFA8826F**		
(अपीलार्थी /**Assessee**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by : Shri Somnath Ghosh, Advocate
Revenue by : Shri Supriyo Pal, JCIT, Sr. DR

सुनवाई की तारीख / **Date of Hearing** : **17/12/2019**
घोषणा की तारीख/**Date of Pronouncement** : **16/03/2020**

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2013-14, is directed against the order passed by the ld. Commissioner of Income Tax(Appeals), Durgapur dated 25.01.2019 which in turn arises out of an assessment order passed by Assessing Officer u/s 271E of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The grounds of appeal raised by the assessee are as follows:

1.FOR THAT the Ld. Commissioner of Income Tax (Appeals) Durgapur failed to appreciate that none of the conditions precedent required to be satisfied for the assumption of jurisdiction u/s. 271E read with section 269T of the Income Tax Act, 1961 existed and/or have been complied with and/or fulfilled in the instant case by the Ld. Joint Commissioner of Income Tax. Range 1, Durgapur and his specious action in upholding the impugned order imposing penalty to the extent of Rs. 5,80,000/- in that legal perspective is therefore ab initio void, ultra vires and ex-facie null in law.

2. FOR THAT on a true and proper interpretation of the scope and ambit of the provisions of section 271E of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appenls) Durgapur misconceived his jurisdiction in upholding the action of the Ld. Joint Commissioner of Income Tax, Range 1, Durgapur of passing the specious order imposing penalty to the extent of Rs.5,80,000/- misconstruing the expression "any other preson" appearing in the provisions of section 269T of the Act and his purported finding

reached on such tenuous premise is completely unfounded, unjustified and untenable in law.

3.FOR THAT the Ld. Commissioner of Income Tax (Appeals) Durgapur acted unlawfully in upholding the order imposing penalty u/s. 271E of the Income Tax Act, 1961 amounting to Rs. 5,80,000/- passed by the Ld. Joint Commissioner of Income Tax, Range 1- Durgapur and was remiss in not taking into consideration the 'reasonable cause' as envisaged within the scope and ambit of the provisions of section 273B of the Income Tax Act, 1961 on the facts and circumstances of the instant case and the adverse conclusion reached on that behalf is totally illegal, illegitimate and infirm in law.

3. The facts of the case which can be stated quite shortly are as follows. The assessee filed its return of income for the A.Y. 2013-14 on 19-09-2013 disclosing total income of Rs.1,79,515/-. An assessment u/s 143(3) of I.T. Act 1961 has been made on 21/03/2016 on a total income of Rs.2,72,280/-. The assessing officer noticed that the assessee had repaid cash loan of Rs.1,40,000/- and 4,40,000/- in aggregate to loan creditors Sri Bijay Guha and Sri Samarendra Sinha Babu respectively, on different dates as mentioned in the following table:

Name of party to whom loan repaid in violation of sec-269T	Date of repayment of loan by assessee	Amount of loan repaid
Shri Bijay Guha	02/07/2012	20,000
	08/07/2012	20,000
	14/07/2012	20,000
	18/07/2012	20,000
	18/07/2012	20,000
	25/07/2012	20,000
	12/03/2013	20,000
Sub Total		1,40,000
ShriSamarendraSinhaBabu	24/04/2012	20,000
	25/04/2012	20,000
	26/04/2012	20,000

	27/04/2012	20,000
	28/04/2012	20,000
	29/04/2012	20,000
	30/04/2012	20,000
	01/05/2012	20,000
	03/05/2012	20,000
	04/05/2012	20,000
	05/05/2012	20,000
	10/05/2012	20,000
	12/05/2012	20,000
	15/05/2012	20,000
	17/05/2012	20,000
	20/05/2012	20,000
	25/05/2012	20,000
	30/05/2012	20,000
	02/06/2012	20,000
	05/06/2012	20,000
	08/06/2012	20,000
	10/06/2012	20,000
Sub total		4,40,000
Total		5,80,000

The assessing officer observed that total repayment of loan in cash to the tune of Rs. 5,80,000/-(Rs.1,40,000 + and 4,40,000) was made by assessee during A.Y. 2013-14 which is in contravention of the provisions of section 269T of the I.T.

Act 1961, which attracts Penalty u/s 271E of the I.T. Act 1961. Therefore, AO issued notice to the assessee u/s 271E of the I.T. Act 1961.

In response to the notice, the assessee in his letter dated 31-08-2017 stated that the entire round of transactions took place within the relatives and friends of the family and he had made repayment of the money to the persons who were in dire need of funds on those days, in order to enable them to carry on their business. The assessee also submitted before the AO that the transactions of repayment of loan in question in the instant case are genuine and bona fide, therefore the penal proceedings u/s 271E of the I.T. Act, 1961 should not be initiated.

However, the assessing officer rejected the contention of the assessee and imposed the penalty of Rs.5,80,000/- u/s 271E of the I.T. Act 1961 for violation of provisions of section 269T of the I.T. Act 1961.

4. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before ld CIT(A), who has confirmed the penalty imposed by the assessing officer. Aggrieved, the assessee is in appeal before us.

5. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that assessee, a partnership firm, is an authorized dealer of Hindusthan Petroleum Corporation Limited which is engaged in retail trading of motor spirit and high speed diesel. During the previous year relevant to the assessment year under dispute, the assessee had repaid different amounts on various dates to two persons, namely Shri Bijay Guha in the sum of Rs. 1,40,000/- and Shri Samarendra Sinhababu amounting to Rs. 4,40,000/- aggregating to a sum Rs. 5,80,000/-. According to the ld. Assessing Officer, such repayment of the amounts to the partners had infringed the provisions of section 269T of the Income Tax Act, 1961.

Ld Counsel for the assessee submits before us that the persons to whom such amounts were repaid were very close of its partners, who do not come within the scope of the expression 'any other person' as envisaged in sections 269SS and 269T of the Act. The ld Counsel contended that these payments were genuine and as such, the mischief of section 271E of the Income Tax Act, 1961 is inapplicable. It was also explained that both these persons were in dire need of funds on those days; since they provide financial assistance to the assessee as and when needed, the assessee was under obligation to repay the same. It was, also, apprised that these transactions did not come within the scope of the provisions of section 271E read with section 269T of the Act, since the assessee was unaware of such provision which led to the instant levy.

On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and the same is not being repeated for the sake of brevity.

It is an undisputed fact that the penalty u/s. 271E of the Income Tax Act, 1961 was imposed in respect of the repayment in the aggregate sum of Rs.5,80,000/- being amount so borrowed from the relatives and friends of the partners and as such, the object of the provisions of section 271E read with section 269T of the Act are to be considered in light of the intention of the Legislature enacting such provision. It is settled that the object of introduction of section 269SS and 269T of the Income Tax Act, 1961 is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money and if he has made some false entries in his accounts, he shall not escape by giving false explanation for the same. The essence of this philosophy was embodied through the introduction of section 269SS and 269T of the Act in the statute which was to eradicate the evil practice of making false entries in account books and later manufacturing explanations in support thereof. We note that Hon`ble Supreme Court in the case of A.D.I.T. -VS- Kumari A. B. Shanti (2002) 255 ITR 487 (SC), held as follows:

> *"The next contention was that original Section 276DD is draconian in nature as penalty imposed for violation of Section 269SS is imprisonment which may extend to two years and shall also be liable to fine equal to the amount of loan or deposit. This Section was subsequently omitted and a new Section 271D was enacted. The penalty of imprisonment was deleted in the new Section. The new Section 271D provides only for fine equal to the amount of loan or deposit taken or accepted.*
>
> *It is important to note that another provision, namely Section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of Section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of Section 273B in the Act. If there was a genuine and bona fide transaction and if for any reason the tax payer could not get a loan or deposit by account- payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power."*

6. In the light of the judgment of the Hon`ble Supreme Court in the case of Kumari A. B. Shanti (supra), we note that in assessee`s case there is no question of violating the legislative intent behind the introduction of section 269T of the Act inasmuch as these transactions have been properly recorded in the books of accounts of the assessee and also in the books of accounts of Shri Bijay Guha and Shri Samarendra Sinhababu, who confirmed such transactions, leaving no room for doubt as regards the sources from which it had refunded such loans which were duly corroborated from the books.

At this juncture it is appropriate to quote the circular issued by the Central Board of Direct Taxes. The CBDT in Circular No.387 dated 06-07-1984 has issued explanatory notes after the Finance Act, 1984, which is given below:

> *"32.1 Unaccounted cash found in the course of searches carried out by the Income Tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and taxpayers are also able to get confirmatory letters from such persons in support of their explanation.*
>
> *32.2 With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a*

new section 269SS in the Income Tax Act debarring persons from taking or accepting, after 30th June, 1984 from any other person, any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposits is Rs. 10,000/- or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs. 10,000 or more. The prohibition will also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more.

32.3 The prohibition will, however, not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by, the following, namely:

(a) Government;
(b) any banking company, post office savings bank or any co-operative bank;
(c) any corporation established by a Cetral, State or Provincial Act ;
(d) any Government company as defined in section 617 of the Companies Act, 1956;
(e) such other institution, association or body or class or institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing notify in this behalf in the Official Gazette.

32.4 For the purposes of the provision, the expression banking company' shall have the meaning assigned to it in clause (a) of the Explanation to section 40A(8) of the Income-tax Act and the expression co-operative bank' shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949. The expression loan or deposit, for the purposes of the provision, would mean loan or deposit of money.

32.5 Fears have been expressed in certain quarters that the provision will adversely affect the rural sector and farmers who bring produce to mandies for sale. The prohibition contained in section 269SS is confined to loans and deposits only and does not extend to purchase/sale transactions.

32.6 Section 276DD, inserted in the Income-tax Act by the Finance Act, provides that if a person, without reasonable cause or excuse, takes or accepts any loan or deposit in contravention of the aforesaid provisions, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to a fine equal to the amount of such loan or deposit."

We note that the provision of section 269T of the Act, which is in seriatim to section 269SS of the Act, was introduced to eliminate the proliferation of black money in the society at large and not otherwise. As per CBDT circular, noted

above, the assessee should explain the reasonable cause. In the instant case, the assessee has explained the reasonable cause stating that the entire transactions took place within the relatives and friends of the family and he had made repayment of the money to the persons who were in dire need of funds on those days, in order to enable them to carry on their business. These transactions have been recorded in the books of the assessee as well as in the books of the person to whom the payment was made. This is bona fide and genuine transaction to help the relatives and friends in needy hours and there was no intention to deceive the Revenue.

7. We note that Hon`ble Madras High Court in the case of C.I.T. -VS- Lakshmi Trust Co. [2008] 303 ITR 99 (MAD), held as follows:

"We have given our careful consideration to the submissions made on either side.

This court in CIT v. Kundrathur Finance and Chit Co. [2006] 283 ITR 329 (Mad), following the decision of the apex court in Asst. Director of Inspection (Invst.) v. Kum. A. B. Shanthi [2002] 255 ITR 258, held that if there was genuine and bona fide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.

In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal found on the facts that the transactions were genuine and the identity of the lenders was also satisfied. The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on the facts, following the decision of this court in CIT v. Ratna Agencies [2006] 284 ITR 609 , wherein it was held that the Ending recorded by the Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this court to interfere with such a finding of fact.

For all these reasons, answering the questions of law referred to us against the Revenue, the appeal stands dismissed. No costs."

Therefore, when the transactions were genuine and the identity of the lenders were established and there was no intention found to evade tax, as in the instant case, the cancellation of penalty was upheld by the Hon`ble Madras High Court.

8. We note that provisions, of Section 273B of the Act provide that notwithstanding anything contained in the provisions of 271E of the Act, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account-payee cheque or account-payee demand draft, then the penalty may not be levied. If there was a genuine and bona fide transaction and if for any reason the tax payer could not get a loan or deposit by account- payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power.

We note that Coordinate Bench of ITAT Hyderabad in the case of Industrial Enterprises -VS- D.C.I.T. [2000] 73 ITD 252 (HYD-Trib) held that where both the parties have disclosed the transactions to the same assessing authority and the genuineness of the transactions are not in dispute, the provisions of section 269T of the Act are not applicable. Findings of the Tribunal is given below:

"25. *In the instant case what the assessee has done was the repayment of loans and not deposits. Therefore, the repayment of these loans by way of cash is not hit by the provisions of section 269T. Accordingly, we find that there is no case to invoke the penal provisions of section 271E. On this legal ground, we find that the imposition of penalty under section 271E will not stand.*

26. *Even otherwise, assessee has explained the circumstances in which it was constrained to make the repayment of the loans in question in cash. We are satisfied that the assessee was prevented by a reasonable cause from making repayment of these loans by cheque or demand draft. Our finding with regard to existence of a reasonable cause taking away an assessee from the liability to penalty under section 271D holds good even in the context of the impugned penalty under section 271E. In the circumstances, even on facts, we are of the view that this is not a fit case for the levy of penalty under section 271E.*

27. *Therefore, both on the question of law as well as on facts, we find that imposition of penalty under section 271E is not in order. It is therefore, cancelled."*

In the instant case, the Ld. Assessing Officer ought to have considered that the payment of loan of Rs.5,80,000/- by the assessee were undisputedly genuine and bona fide as they were reflected in the books of the recipients as well as those of the assessee. The assessee has explained the circumstances in which it was constrained to make the repayment of the loans in question in cash, therefore penalty should not be levied.

9. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi- criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.Penalty will not also be imposed merely because it is lawful to do so. For this we rely on the judgment of the Hon`ble Supreme Court in the case of Hindustan Steel Ltd. Vs. State Of Orissa 83 ITR 26, wherein it was held as follows:

*"**5.** Under the Act penalty may be imposed for failure to register as a dealer : s. 9(1), r/w s. 25(1) (a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi- criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out."*

We note that the provisions of section 271E of the Income Tax Act, 1961 lays down conditions for imposition of penalty for repayments of loans and deposits in cash, where the amount exceeds Rs.20,000/- in violation of section 269SS of the

Act. Considering the fact that this provision is brought in for identification of source for repayment, there should not be any levy of penalty where the persons are otherwise properly identified and the transactions are genuine, because there can be no attempt to evade tax, where the identities of the persons dealt with are known. In the instant case, the repayment of advances from regular parties are identifiable and the assessee has explained the circumstances in which it was constrained to make the repayment of the loans in question in cash. That being so, the penalty imposed in the sum of Rs.5,80,000/- on repayment of advances from two persons should be deleted, hence we delete the penalty of Rs.5,80,000/-.

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

Order pronounced in the open court on this 16/03/2020.

Sd/-	**Sd/-**
(A. T. Varkey)	**(A. L. Saini)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata;
Dated: 16/03/2020
RS, Sr.PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Assessee- Auto Fuel Centre
2. प्रत्यर्थी / The Respondent.- JCIT, Circle-1, DGP
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

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By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.