

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 2304/Kol/2018
Assessment Year: 2013-14

Ram Bilaas Agarwal (PAN: ACUPA4511E)	Vs.	Joint Commissioner of Income-tax, Range-36, Kolkata.
Appellant		Respondent

Date of Hearing	04.03.2020
Date of Pronouncement	29.05.2020
For the Appellant	N o n e
For the Respondent	Shri Dhruvhajyoti Roy, JCIT

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-10, Kolkata dated 21.08.2018 for AY 2013-14.

2. The sole ground involved in this appeal of assessee is against the action of the Ld. CIT(A) in confirming the penalty imposed of Rs.1,55,000/- u/s. 271D of the Income-tax Act, 1961 (hereinafter referred to as the “Act”)

3. None appeared for the assessee. However, we take note that the penalty has been imposed by the JCIT u/s. 271D of the Act for violation of section 269SS of the Act. The Ld. JCIT noticed that the assessee had appeared before him and submitted that the loan has been taken from his son Shri Saurabh Agarwal who earns income from truck plying and has given the money to the assessee being his father who in turn used the same for his business and has shown it as loan from his son. According to Ld. JCIT, no supporting evidence could be produced by the assessee for substantiating his claim. The Ld. JCIT further observed that after going through the ledger account of

Shri Saurabh Agarwal in the books of account of M/s. East India Mercantile Co., a proprietorship concern of the assessee that assessee had received a sum of Rs.15,000/- on 10.07.2012 and another sum of Rs.1,40,000/- on 31.03.2013, both in cash totaling to Rs.1,55,000/- which is in contravention of section 269SS of the Act and since the assessee failed to offer any cogent ground or any exigency to accept cash loan from his son, he imposed penalty u/s. 271D of the Act for violation of the provisions of section 269SS of the Act and accordingly, imposed penalty of an equal amount of Rs.1,55,000/-. On appeal, the Ld. CIT(A) taking note that the assessee had not appeared before him on 21.08.2018 and also that assessee had only sent an adjournment application in post, the Ld. CIT(A) observed that the appeal was earlier fixed on 23.05.2018 and that the assessee had specifically requested for a date in August despite that assessee has been seeking adjournments when assessee ought to have attended. Thereafter he decided the appeal by dismissing the same by passing a cryptic order without even looking into the justification/explanation given by the assessee. According to the assessee, it had taken Rs.1,55,000/- in cash from his son Mr. Saurabh Agarwal this fact has been corroborated by the Ld. JCIT after going through the ledger account of assessee's son Shri Saurabh Agarwal has observed that from the ledger account of Shri Subhas Agarwal in the books of account of M/s. East India Mercantile Co., a proprietorship concern of the assessee it is seen that the assessee had received a sum of Rs.15,000/- on 10.07.2012 and another sum of Rs.1,40,000/- on 31.03.2013 both in cash. The explanation of the assessee was that his son who earns income from truck plying has given the money for safe keeping with him and when there was an urgent necessity to pay the creditors to run his proprietorship business, the assessee had used this money and reflected it as loan from his son. A father using the money of his son cannot be termed as loan given by the son to the father/assessee. When the father needs money or son needs money, the money given between the family members cannot be termed as loan or advances even though for purpose of accounting it is shown as loan. It is a settled law that the nomenclature in the account books cannot determine the nature of transaction. Since the Ld. JCIT has noted from the ledger account of the son Shri Saurabh Agarwal that the money has

been given by the son to the father and that have been used by the father for tiding over urgent business requirement cannot be termed as loan/advance, so it cannot attract the penalty u/s. 271D of the Act, therefore, we direct deletion of the penalty as imposed by the Ld. JCIT and confirmed by the Ld. CIT(A). Therefore, appeal of assessee is allowed.

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

Order is pronounced in the open court on 29th May, 2020

Sd/-

Sd/-

(J. Sudhakar Reddy)
Accountant Member

(Aby. T. Varkey)
Judicial Member

Dated : 29th May, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Ram Bilas Agarwal, 29, R. N. Mukherjee Road, Windsor House, R-19, 2nd floor, Kolkata-700 001.
2. Respondent – Jt. CIT, Range-36, Kolkata.
3. The CIT(A)-10, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Asstt. Registrar.