

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM  
(through web-based video conferencing platform)**

**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.275/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2013-14)**

Dy.Commissioner Income Tax  
Central Circle-1  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

Vs. M/s Manoj Vaibhav Gems N  
Jewellers P.Ltd., Dwarakanagar,  
Visakhapatnam  
[PAN :AABCV8928]

**(प्रत्यर्थी/ Respondent)**

**Cross Objection No.78/Viz/2019**

**आयकर अपील सं./I.T.A.No.275/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2013-14)**

M/s Manoj Vaibhav Gems N  
Jewellers P.Ltd., Dwarakanagar,  
Visakhapatnam  
[PAN :AABCV8928]

**(अपीलार्थी/ Appellant)**

Vs. Dy.Commissioner Income Tax  
Central Circle-1  
Visakhapatnam

**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by  
निर्धारिती की ओर से / Assessee by

: Shri D.K.Sonowal, CIT, DR  
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing  
घोषणा की तारीख/Date of  
Pronouncement

: 23.09.2020  
: 23.11.2020

## **आदेश /ORDER**

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

This appeal is filed by the revenue against the order of Commissioner of Income Tax (Appeals)-3, [CIT(A)], Visakhapatnam in Appeal No.56/2018-19/CIT(A)-3/VSP/2018-19 dated 25.02.2019 for the Assessment Year (A.Y.) 2013-14 and cross objections are filed by the assessee in support of the order of the Ld.CIT(A).

2. All the grounds of appeal are related to the levy of penalty u/s 271D of the Income Tax Act, 1961 (in short 'Act'). During the course of assessment proceedings relevant to the A.Y.2013-14, the Assessing Officer (AO) found that from 01.04.2012 to 11.06.2012, the assessee had received the amounts in cash of Rs.6,99,12,850/- as loan. Therefore, the Addl.CIT, Central Range, Visakhapatnam has initiated the penalty u/s 271D of the Act and issued show cause notice calling for explanation of the assessee as to why the penalty should not be levied for contravention of provisions of section 269SS of the Act. In response to the show cause notice, the assessee filed explanation stating that the company M/s Manoj Vaibhav Gems and Jewellers Pvt. Ltd., formerly known as M/s Vaibhav Empire Private Ltd. (VEPL in short) is a trader in bullion and jewellery. It is a sister concern of

M/s Vaibhav Jewellers, Prop.G.Manoj Kumar (HUF) who undertook gold savings schemes, had been collecting subscriptions from scheme subscribers and advancing amounts to the company on account towards the payments for jewellery redemption purchases made by it's scheme subscribers. In view of the arrangement between the company and HUF, the HUF has been advancing amount to the company and the payments were made through bank or cheque. In a ghastly incident which took place on 07.02.2012, the then Chairman and the Managing Director of the company, Sri G.Manoj Kumar was murdered in Bangalore while carrying the gold jewellery. Because of the incident, the bank accounts of company could not be operated as he was holding the power to operate all the accounts on behalf of the company. Similarly, all the bank accounts of HUF for which Shri Manoj Kumar was Karta were also halted for similar reason. It has taken long time to revive the accounts and change the authorised signatory to new Karta. As the business operations could not be stopped due to sad demise of Shri Manoj Kumar, the HUF collected the amounts in cash from scheme subscribers and deposited the cash in company's accounts till 11.06.2012. Subsequently, the bank operations were revived in HUF after the powers of bank operations were given to new Karta Mrs. GBM Ratna Kumari and from then onwards the payments were made

through cheques. Since the cash deposits were trade transactions and accepted due to death of Managing Director during the interim period the assessee requested to drop the penalty proceedings. The Addl.CIT did not convince with the explanation of the assessee and verified the books of accounts and found that the assessee had operated the bank accounts and made some payments through RTGS on some occasions. Since some transactions were made through bank during the interim period, the Addl.CIT did not believe the contention of the assessee that the bank accounts could not be operated due to sad demise of Shri Manoj Kumar. Therefore, the Addl.CIT held that the assessee did not demonstrate that acceptance of cash falls under exceptions to section 269SS of the Act, hence, levied the penalty u/s 271D of the Act for violation of provisions u/s 269SS of the Act amounting to Rs.6,99,12,850/-.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) found that the transactions between the assessee company and the HUF were trade transactions and the same cannot be held as loan between the assessee and the HUF. There were stray instances where, the AO found some bank transactions by the HUF, but it is observed by the Ld.CIT(A) that the payments were made by Vaibhav Jewellers Pvt.

Ltd., on behalf of the HUF and made journal entries to that effect as reflected in the ledger account of HUF in the assessee's books. Therefore, viewed that there is sufficient and reasonable cause for receiving the cash from HUF and also given a finding that the transactions in question were trade transactions, hence cancelled the penalty levied by the AO u/s 271D of the Act. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) in para No.5.1 which reads as under :

*"5.1. I have considered the penalty order of the Addl.CIT, the submissions of the appellant and the material placed before me. It is well established law now that penalty cannot be levied where there is reasonable cause' for transgression of the statutory provisions. It is for the appellant to show that there is 'reasonable cause' preventing him from acting as mandated by law. In the presents ease, the "reasonable cause' explained/given by the appellant is the death of Mr. Manoj Kumar on 07.02.2012 by way of murder at Bangalore. Shri Manoj Kumar Managing Director (MD) of the appellant company and also the Karta of Manoj Kumar (HUF). The above facts are not in dispute. Further, it is not disputed about the scheme subscriptions being run by HUF and subscribers ultimately receiving/buying gold ornaments from the appellant company. The contention of the appellant is that on the death of Mr. Manoj Kumar, the bank accounts of the appellant company and that of HUF which were being operated by Mr.Manoj Kumar were frozen and payment transactions came to standstill. The payment transactions in the appellant company accounts were allowed after completing the formalities by authorizing alternative persons to sign the cheques. The formalities for authorizing alternative signature for the operation of bank account of HUF took more time as it also required obtaining new PAN etc. and the same was operated by new authorised person we.f. 15.05.2012 (561) and 10.07.2012 (Kotak Mahindra Bank). Till that time the cash which was being collected under various schemes and payable to the company was paid/deposited in cash by HUF This is a reasonable cause, which prevented the appellant from collecting/receiving the amounts in cheque as being done before the murder of Mr. Manoj Kumar and after the new person authorised sign is in place. The facts stated above are not in dispute. But the case of the Addl.CIT levying penalty is that certain transactions in cheque were made by the HUF during the above period and these transactions also could have been done by cheque. The appellant filed the ledger account copies and vouchers for the transactions mentioned by Addl. CIT in the order. It is seen that the*

*payments were made by M/s.Vaibhav Empire Pvt. Ltd.(appellant company) on behalf of Manoj Kumar (HUF) and made journal entries to that effect as reflected in the ledger account of HUF in the appellant's books of account. In View of the above, it cannot be said that the HUF was making payments through cheques during the relevant period. The Addl. CIT mistook the above payments to be made by the HUF. The payments, were made by appellant company on behalf of HUF after operations in the bank accounts of appellant were restored. Further, it is mentioned that the appellant issued cheques on 03.04.2012 and 04.04.2012. The same are done after transactions in bank account of the appellant company were restored. In view of the above factual position, it is held that the appellant was prevented from 'reasonable cause' for not obtaining payments through cheques as was being done earlier and thereafter. Accordingly, once the 'reasonable cause' has been established, no penalty is leviable. The penalty of Rs.6,99,12,850/- levied u/s.271D is cancelled."*

4. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that there were no possible or justifiable reasons for accepting the cash deposits and showing them as unsecured loans in the books of accounts of the assessee, when some transactions were done through bank. The bank accounts of the assessee company were operated during the period 07.02.2012 to 11.06.2012 and some payments were also made through bank account during the above period. The Ld.DR further argued that very fact that the unsecured loans were shown in the books of the company evidences that the assessee company had accepted the cash loans from Manoj Kumar, HUF in violation of provisions of section 269SS of the Act, hence, the Ld.CIT(A) ought not to have accepted the explanation of the

assessee and thus requested to set aside the order of the Ld.CIT(A) and allow the Revenue's appeal.

5. On the other hand, the Ld.AR relied on the orders of the Ld.CIT(A) and argued that the transactions in questions were trade transactions. Since the assessee is receiving the payment for jewellery redemption under the scheme during the interim period, i.e. from the death of Shri Manoj Kumar, HUF till the date of revival of bank account, the bank accounts could not be operated and hence whatever cash collected from the scheme was deposited with the assessee company by HUF. Therefore, the transactions in question were business transactions and also argued that there cannot be any better reason than the death of Karta and Managing Director of the company to take lenient view for dropping the penalty proceedings. Therefore, argued that the transactions in question were business transactions on which penalty is not leviable and the death of Managing Director is sufficient and reasonable cause for accepting the cash, hence requested to uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

6. We have heard the rival contentions and gone through the orders of the authorities below. There is no doubt that the Managing Director of the company Shri G.Manoj Kumar who was also the Karta of HUF who was murdered in an incident on 07.02.2012. Death of Karta and the Managing Director of the company naturally suspends the bank transactions till such time, Karta is replaced and authorised signatories are approved by the Board of Directors for operating the bank accounts. In the case of Karta of HUF, lot of legal formalities are required to give power of attorney. In the instant case, Mrs GBM Ratna Kumari is replaced as Karta and explained that lot of time was taken for revival of the bank account of HUF. Cash deposits were made by HUF during the interim period of death of Karta till the revival of bank account of HUF. Though the Ld.Addl.CIT observed that certain bank transactions were made in the HUF account, the same were found to be the payments made by the assessee company on behalf of the HUF. It is undisputed fact that HUF is undertaking gold savings scheme and has been collecting the subscriptions from subscribers and advancing amount to the company for jewellery redemption purchases made by scheme subscribers. Though it is placed under the unsecured loans, prima facie, it is business transaction since, HUF has deposited the amounts with the assessee company for redemption of jewellery purchases under the

scheme. Therefore, though the assessee has placed the same as unsecured loans, the cash receipts were trade transactions. The Ld.CIT(A) has also taken similar view while cancelling the penalty. The department has not brought on record to show that the cash receipts accepted by the company do not represent the scheme subscriptions for redemption of the jewellery as stated by the assessee. The bank transaction stated to have been examined by the Ld.CIT(A) and given a finding that the company has made payments on behalf of the HUF. The same was not controverted by the Ld.DR during the appeal hearing. The assessee has filed the paper book and in paper book page No.20 to 31 Vaibhav Empire Pvt Ltd(VEPL) account is furnished by the assessee in the books of HUF. Similarly in page No.33 to 44 the account of Shri G.Manoj Kumar, HUF, Proprietor, Vaibhav Jewellers is furnished in the books of Vaibhav Empire Private Ltd. From the above pages of the paper book, we find that all the deposits were settled with sale of jewellery or the account transfers and thus proved to be trade transactions. The department also did not bring any material to show that the cash received by the company was subsequent to the revival of the bank account in the case of HUF and the transactions were not the trade transactions. Considering facts of the case, we are of the considered view that there cannot be any better reason for receipt of cash deposits than the

death of Karta or Managing Director of the company. It is also not disputed that all the cash receipts were duly accounted in the books of the assessee as well as the HUF. There were no unaccounted transactions. Therefore, we are of the view that there was a sufficient and reasonable cause for accepting the cash deposits, hence, we do not see any reason to interfere with the order of the Ld.CIT(A). Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

7. The assessee filed cross objections in support of the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee becomes infructuous, hence dismissed.

8. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 23<sup>rd</sup> November 2020.

Sd/- (वी.दुर्गा राव) <b>(V. DURGA RAO)</b>	Sd/- (डि.एस. सुन्दर सिंह) <b>(D.S. SUNDER SINGH)</b>
<b>न्यायिक सदस्य/JUDICIAL MEMBER</b>	<b>लेखा सदस्य/ACCOUNTANT MEMBER</b>
दिनांक /Dated :23.11.2020	
L.Rama, SPS	

*I.T.A. No.275/Viz/2019 and CO No.78/Viz/2019, A.Y.2013-14  
M/s Manoj Vaibhav Gems N Jewellers Pvt. Ltd., Visakhapatnam*

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue – Dy.Commissioner Income Tax, Central Circle-1, Visakhapatnam
2. निर्धारिती/ The Assessee– M/s Manoj Vaibhav Gems N Jewellers P.Ltd., Dwarakanagar, Visakhapatnam
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 5.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, Visakhapatnam