

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 2976/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Shesharam Nainaji Choudhary,  
S. No.162/65, Plot No.1,  
Mahatma Society, Kothrud,  
Pune-411 038.  
PAN : AALPC4969K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Addl. Commissioner of Income Tax,  
Range-3, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prateek Jha

Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 28.01.2021

घोषणा की तारीख / Date of Pronouncement : 29.01.2021

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeal), Pune-3 dated 26.09.2017 for the assessment year 2012-13 as per the following grounds of appeal on record :

*"1. The Learned CIT(A) erred in sustaining the order of the Ld. Addl. CIT, Range-3, Pune who had imposed the penalty of Rs.5,00,000/- without appreciating the facts on the case and evidences furnished properly.*

*2. The Learned CIT(A) erred in confirming the penalty order merely on suspicion and surmises and presumption without appreciating the evidences which is not permissible under the Income Tax Act.*

*3. The above grounds of appeal are without prejudice to one another.*

*4. The appellant craves leave to furnish Additional Evidences, which may be relevant to the above Grounds of appeal, in course of the appeal proceedings.*

*5. The appellant craves leave to amend or alter any of the above grounds of appeal or to add the new Grounds of appeal during the course of appeal proceedings.”*

2. Though the assessee has raised multiple grounds of appeal, the crux of the grievance of the assessee in this appeal is with regard to imposition of penalty of Rs.5,00,000/- u/s.271D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The brief facts in this case are that the assessee is an individual and agriculturist engaged as retailer in the sale of sweets and namkin etc. The assessee has filed return of income for assessment year 2012-13 on 30.03.2013 declaring total income of Rs.4,24,716/-. The case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer, Pune called for the details of unsecured loans accepted during the year. The Assessing Officer also called for the confirmation of balance outstanding in the name of various creditors. After verification of the submissions filed by the assessee, it was revealed that the assessee had accepted Rs.5,00,000/- in cash from C.B Oswal and repaid the said amount by cheque. The assessee in his submissions placed on record has stated that the said amount of Rs.5,00,000/- was not a loan or deposit but it was an advance against sale of land. The assessee had further submitted that the advance was against sale of land at Karjat which did not materialize and therefore, the advance of Rs.5,00,000/- was repaid to C.B Oswal by cheque. In this regard, the assessee has also enclosed the confirmation letter from C.B Oswal.

4. The Revenue, on the other hand, was of the view that since the assessee could not produce the receipt given to C.B Oswal acknowledging the advance amount or that there was no written document regarding sale of land at Karjat to C.B Oswal, therefore, the said amount of Rs.5,00,000/- was accepted by the assessee in cash as loan and hence, there was violation of provision of Section 269SS of the Act. Thus, penalty of Rs.5,00,000/- was imposed on the assessee u/s.271D of the Act.

5. The Ld. CIT(Appeal) while upholding the findings of the Assessing Officer observed that no documentary evidences were furnished by the assessee substantiating that the amount of Rs.5,00,000/- received by the assessee in cash and repaid by cheque was only an advance and not loan or deposit. The Ld. CIT(Appeals) even suspected or disbelieved the written confirmation filed by the assessee which was issued by C.B Oswal regarding entire transaction.

6. We have perused the case records and heard the rival contentions. That from the orders of the sub ordinate Authorities, it is crystal clear that though on one hand, they disbelieved the evidences placed on record specifically confirmation letter of C.B Oswal, however, they themselves have not conducted any specific enquiry or examination with regard to the facts of the case. The entire addition has been made on the premises of guess work and suspicion. It is the contention of the assessee that some land sale transactions were to be made with C.B Oswal, for which, the advance amount was paid in cash to the assessee. That however, when this transaction did not materialize, the assessee refunded the said amount of Rs.5,00,000/- in cheque back to C.B Oswal. These facts were never enquired or examined or verified by the Department. Section 269SS refers to the loan or deposit received in cash and since it was an advance taken, the amount, therefore

would not be within the rigours of Section 269SS of the Act and hence, there cannot be any penalty leviable u/s.271D of the Act on the assessee. That further, the assessee could not be penalized for the inaction of the Department in verifying the facts of the case wherein both the Assessing Officer and the Ld. CIT(Appeal) has made the addition based on mere surmises and guess work and therefore, penalty u/s.271D of the Act cannot be sustained. Accordingly, we direct the Assessing Officer to delete the penalty from the hands of the assessee.

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

Order pronounced on 29<sup>th</sup> day of January, 2021.

Sd/-  
**WASEEM AHMED**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> January, 2021.  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-3.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	28.01.2021	Sr.PS/PS
2	Draft placed before author	28.01.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		