

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President
&
Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 641/KOL/2019
Assessment Year: 2013-2014**

**Rahul Kundu,.....Appellant
Bhatchalla, Sripally, Burdwan-713101
[PAN:AKFPK7524A]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-1(2), Burdwan,
Aayakar Bhawan, Kachari Road,
Court Compound, Burdwan**

Appearances by:

*Shri Subho Chakraborty, Advocate, appeared on behalf of the assessee
Shri Supriyo Pal, Addl. CIT, appeared on behalf of the Revenue*

Date of concluding the hearing : August 12, 2021

Date of pronouncing the order : August 18, 2021

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Burdwan dated 04.01.2019, whereby he confirmed the penalty of Rs.1,95,000/- imposed by the Assessing Officer under section 271D of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of trading in packaged milk. In the assessment completed under section 143(3) vide an order dated 17.03.2016, the total income of the assessee was determined by the Assessing Officer at Rs.5,69,860/- as against the total income of Rs.1,99,940/- returned by the assessee. As noted by the Assessing Officer during the course of assessment proceedings, a loan of Rs.1,95,000/- was received by the assessee in cash

from his brother Shri Nabarun Kundu on 31.03.2013 in contravention of the provision of section 269SS of the Act. He, therefore, initiated the penalty proceedings under section 271D of the Act and issued show-cause notice to the assessee. In reply to the said notice, a letter was filed by the assessee stating that he had to arrange loan of Rs.1,95,000/- in cash from his brother Shri Nabarun Kundu for business exigency on 31.03.2014, which was a Sunday. He also submitted that the same was Bank Holiday and, therefore, the said loan could not be availed by cross cheque or Bank Draft. This explanation of the assessee was not found satisfactory by the Assessing Officer and holding that the same did not constitute the reasonable cause for availing the loan by the assessee in contravention of the provision of section 269SS, he proceeded to impose the penalty of Rs.1,95,000/- under section 271D of the Act.

3. The penalty imposed by the Assessing Officer under section 271D was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the submission made before the Assessing Officer was reiterated on behalf of the assessee before the Id. CIT(Appeals) in support of his case that there being a reasonable cause for accepting the loan in question from his brother in cash, the imposition of penalty under section 271D was not tenable. The Id. CIT(Appeals) did not find merit in the submission made on behalf of the assessee. According to him, the assessee, as rightly observed by the Assessing Officer, should have opted online banking mode or should have utilized debit or credit cards for arranging the amount required by him which was available on Bank Holiday. He accordingly held that there was no reasonable cause for the acceptance of loan of the assessee from his brother in cash in contravention of the provision of section 269SS. The Id. CIT(Appeals), therefore, confirmed the penalty imposed by the Assessing Officer under section 271D by his appellate order dated 04.01.2019. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel on behalf of the assessee before the authorities below as well as before the Tribunal, the loan amount in question was received by the assessee in cash from his brother Shri Nabarun Kundu and this position has not been disputed either by the authorities below or even by the Id. D.R. at the time of hearing before us. In the case of ITO -vs.- Sunil M. Kasliwal [(2003) 80 TTJ (Pune) (TM) 1] cited by the Id. Counsel for the assessee, it was held by the Tribunal that the provisions of section 269SS of the Act apply to loans/deposits taken from "any other person" and the said expression "any other person" appearing in section 269SS of the Act means persons who are not very closely connected with the assessee. It was held that where the transactions had taken place with closely related persons in the family and the genuineness of the transactions is not doubted, penalty under section 271D of the Act could not be levied. A similar view has been expressed by the Bangalore Bench of the Tribunal in the case of G.D. Subraya Sheregar -vs.- ITO (2006) 10 ITR 378, wherein contravention of provision of section 269SS was held to be not applicable in a transaction between a father and son. As pointed out by the Id. Counsel for the assessee, Kolkata Bench of this Tribunal has followed both these decisions of the Coordinate Benches to delete the penalty imposed by the Assessing officer under section 271D of the Act as confirmed by the Id. CIT(Appeals) in the case of Ranjit Roy -vs.- JCIT vide its order dated March 29, 2019 passed in ITA No. 2254/KOL/2017 where the loan transaction was between the related parties. Respectfully following the ratio of all these decisions of this Tribunal, we hold that the penalty imposed by the Assessing officer under section 271D and confirmed by the Id. CIT(Appeals) in the case of loan transaction between two brother is not sustainable and cancelling the same, we allow this appeal of the assessee.

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

Order pronounced in the open Court on August 18, 2021.

Sd/-

**(A.T. Varkey
Judicial Member**

Sd/-

**(P.M. Jagtap)
Vice-President**

Kolkata, the 18th day of August, 2021

- Copies to :*
- (1) Rahul Kundu,
Bhatchalla, Sripally, Burdwan-713101*
 - (2) Income Tax Officer,
Ward-1(2), Burdwan,
Aayakar Bhawan, Kachari Road,
Court Compound, Burdwan*
 - (3) Commissioner of Income Tax (Appeals), Burdwan,*
 - (4) Commissioner of Income Tax ,*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Senior Private Secretary/DDO,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.