

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.2526/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2009-10)

Mr. K.V. Krishnamurthy, Plot No.17, Temple Town Subburaya Nagar, Tiruneermalai Road, Chrompet, Chennai-600 044.	Vs	Joint Commissioner of Income Tax , Range Tambaram (i/c) Chennai.
PAN: AOQPK 4483B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Mr. T. Vasudevan, Advocate
प्रत्यर्थीकी ओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	04.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	11.04.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-10, Chennai dated 24.06.2018 and pertains to assessment year 2009-10.

2. The assessee has raised following grounds of appeal:-

“ 1. The order of the Commissioner of Income Tax(Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.

2. The CITIA) erred in confirming the levy of penalty of Rs.6,97,805/- under sec.271-D of the Act.

3. *The CIT(A) failed to appreciate that the assessee had made cash borrowals from his wife, smt.Kamala of Rs.240000 on three dates and Rs.293805 by D.D. which had all been wrongly considered as in violation of sec.269SS and hence the levy of penalty was unjustified and untenable in law.*

4. *The CIT(A) further failed to appreciate that the assessee was engaged in engineering consultancy work and was constantly on business tours and hence to meet out the exigent situations had resorted to temporary advances from his wife and hence are outside the purview of sec.269SS of the Act.*

5. *The CIT(A) further failed to appreciate that the borrowals from wife and close relatives are not liable to be considered for cash borrowals in violation of the provisions and ought to have followed the judicial precedents in this regard and hence confirming the levy of penalty on such amounts is unsustainable on the facts of the case.*

6. *The CIT(A) further failed to appreciate that the amount of Rs.39000 borrowed from Shobi Chemicals on 1.11.08 was deposited in bank on 5.11.08 as the cash balance was very less and considering the exigency, the cash borrowal was not liable to considered for levy of penalty.*

7. The CIT(A) further failed to appreciate that the amount of Rs.50000 borrowed from K.Srinivas on 14.7.08 was deposited in bank on 17.7.08 along with another amount for anticipated business expenses and hence confirming the levy of penalty was unjustified.

8. The CIT(A) further failed to appreciate that the assessee had borrowed a total of Rs.75000 from various friends which were all below the threshold limit of Rs.20000 and they being not in violation of sec.269SS, confirming the levy of penalty on such amounts was unjustified.

9. The CIT(A) further failed to appreciate that in view of the Hon'ble Supreme Court decision in Kum A.B.Shanthi case holding provisions of sec.269SS are not intended for genuine transactions, which is reflected in the books of respective parties and that penalty need not be levied on reasonable cause shown, and thus ought to have deleted the penalty levied.

10. The CIT(A), in any event, ought to have afforded adequate opportunity to the assessee considering that the assessee had to search nearly a decade-old records for explaining the cash borrowals and thus ought to have considered the same and cancelled the

penalty levied under sec.271D of the Act on the assessee.

11. The CIT(A), in any event, ought to have considered the contentions in the proper perspective and held that the borrowals were genuine and reasonable cause having been explained by assessee and thus deleted the penalty levied.”

3. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2009-10 on 30.07.2009 declaring total income of Rs.3,01,810/- and assessment has been completed u/s.143(3) of the Income Tax Act, 1961 and accepted returned income. Subsequently, the Joint Commissioner of Income Tax issued notice u/s.271D of the Income Tax Act, 1961 dated 30.09.2013 and called upon the assessee to explain as to why penalty shall not be levied for contravention of provisions of section 269SS of the Income Tax Act, 1961, for accepting loans/deposits, otherwise than by account payee cheque or account payee bank draft in excess of specified limit. In response to notice, the assessee has filed detailed written submissions and argued that although, he had taken cash loan in excess of prescribed limit, but such loans have been taken for emergency needs and thus, comes under

reasonable cause as provided u/s.273B of the Income Tax Act, 1961, and consequently, it cannot be held that there is violation of provisions of section 269SS of the Act. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to him, reasons given by the assessee does not come under reasonable cause as provided under the Act for not levying penalty u/s.271D of the Act, for contravention of provisions of section 269SS of the Act. According to the Assessing Officer, although, the assessee claims to have taken loans from relatives and for urgent requirements, but reasons given by the assessee does not come under exception as provided u/s.269SS / 271D of the Act and thus, opined that it is a fit case for imposition of penalty u/s.271D of the Act, and accordingly, levied penalty of Rs.6,97,805/-, which is sum equal to the amount of loan so taken and accepted otherwise than by account payee cheque or account payee bank draft.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has explained each and every

loan taken from creditors and argued that those loans are taken from relatives and friends for urgent requirements and further, the Assessing Officer was not doubted genuineness of transaction and when the genuineness of transaction was not doubted, question of levy of penalty u/s.271D of the Act does not arise. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various reasons given by the Assessing Officer opined that the assessee does not advance any corroborative evidence and details to establish fact that reasons given by the assessee for accepting loans/deposits in excess of specified limit in contravention of provisions of section 269SS of the Act, and thus, comes under reasonable cause as provided under the Act, and therefore, he opined that there is no error in the reasons given by the Assessing Officer to levy penalty u/s.271D of the Income Tax Act, 1961. The relevant findings of the learned CIT(A) are as under:-

“5.3.1 I have carefully gone through the AO’s observations and the appellant’s grounds as mentioned above under pars 5.1 and 5.2 respectively.

5.3.2 The issue for consideration is the levy of penalty u/s 271D of the Act. In the statement of facts filed along with the appeal papers, the appellant made the following submissions.

“For the assessment year 2009-10, the assessee an Individual in status, filed his return of income on 30.7.09 admitting a total income of Rs.3,01 200. In the assessment completed u/s. 143(3), the income returned was accepted without any addition. Later, the assessee was issued a show cause notice on 30.9.13 for levy of penalty u/s.271D of the Act. The officer stated in the notice that the assessee had taken cash loans as reflected in the books of accounts from a few persons totalling to Rs.697805 and called for the explanation in this regard. In response, the assessee filed replies to the Joint CIT Tambaram Range, Chennai on 14.10.13, 11.11.13 and 22.11.13. Broadly, it was submitted that the borrowals were bonafide and genuine, many were taken on bank holidays to meet the urgent requirements and were repaid within a short time by account payee cheques and constituted only a venial breach not initiating penal action. (i) It was further submitted that one of the parties, Smt.K.Kamala, was assessee’s wife from whom a total of Rs.220000 was borrowed on 3 dates; that she was assessed to tax in PA. No.AOQPK4482A and filed her statement of income disclosing the amounts advanced; that it was not a loan or deposit and was in the nature of running account and hence short term accommodation not attracting the penal provision. (ii) The loan from K. Srinivas for Rs.50000 was explained as made to meet the urgent requirement of car loan payment and that this loan was repaid by account payee cheque on 27.2.09 and being a genuine transaction, does not attract the levy of penalty u/s.271D. (iii) it was submitted that the cash borrowal of Rs.39000 from Shobi Chemicals was made on 1.11.09 and repaid on 3.12.09 by cheque and that this loan being genuine

add a shod-term accommodation, does not attract the levy of penalty. (iv) The borrowal of Rs. 75000 from four friends of assessee does not attract the penal provision since the amounts are less than Rs.20000. The JCIT passed the order levying penalty under sec 271D on 28.3.14 in which he levied a penalty of Rs.6,97,805. In doing so, the JCIT did not deal with the specific objections raised by assessee on each borrowal and held that the assessee had taken loans exceeding Rs.20000 and hence the provisions of sc.269SS are attracted and for violating the same, penalty wader sec.271D is levied.'

5.3.3 I have carefully considered the submissions of the appellant. The AO had levied penalty of a sum of Rs. 6,97,805/- for the reason that the appellant had accepted loans in cash exceeding Rs. 20,000/- in violation of the provisions of Section 269SS of (he Act. The following are the persons from whom the appellant had borrowed along with the amounts borrowed.

SNo.	Name	Date of Loan	Loan amount(Rs.)
1.	Smt. Kamala	01.04.2008	50,000
2.	Smt. Kamala	20.07.2008	1,20,000
3.	Smt. Kamala	31.07.2008	2,93,805
4.	Smt. Kamala	01.11.2008	70,000
5.	M/s. Shobi Chem	01.11.2008	39,000
6.	Sri. K. Srinivas	14.07.2008	50,000
7.	Friends	25.02.2009	75,000
		Total	6,97,805

5.3.4 The AO while levying the penalty had held that the appellant had not disputed the fact that he had accepted loans in cash exceeding Rs.20,000/-. AO further held that the reasons adduced by the appellant that the loans were borrowed on bank holidays and that some of them were taken from persons to whom the provisions of Section 269SS would not apply are not specifically excluded from the provisions of Section 269SS of Income Tax Act, 1961 and hence proceeded to levy the penalty.

5.3.5 During the appellate proceedings, it was submitted that the penalty is not applicable as the borrowals were bonafide and genuine and many were taken on bank holidays to meet the urgent requirements and were repaid within a short time by account payee cheques and thus the violation if any constituted only a venial breach. It was further submitted that one of the parties from whom the appellant, borrowed was his wife from whom he had borrowed on three different dates. It was explained that the appellant's wife was assessed to tax and had filed her statement of income disclosing the amount advanced, therefore it was not a loan or deposit but was in the nature of running account and hence short term accommodation not attracting penal provisions. As regards, the loan obtained from K. Srinivas for Rs. 50,000/- it was explained as made to meet the urgent requirement of car loan payment and foot this loan was repaid by account payee cheque on 27.02.2009 and being a genuine transaction, does not attract levy of penalty 271D. It was further submitted that the cash borrowed of Rs. 39,000/- from Shobi Chemicals was made on 01. 11.2009 and repaid on 03. 12.2000 by cheque and that this loan being genuine and a short term accommodation, does not attract the levy of penalty, The AR also submitted that the borrowal of Rs. 75,000/- from four friends of assessee does not attract the penal provision, since the amounts are less than Rs.20,000/-.

5.3.6 The submission made by the appellant as above has been gathered from the statement of facts are duly considered. However, the appellant has not advanced any collaborative evidences and details to establish the submissions made out in the statement of facts, despite giving opportunities to the appellant to present the facts and submissions. In view of the above, since the appellant has not established reasonable cause for accepting loans in cash exceeding Rs. 20,000/ - in

violation of the provisions of Section 269SS of Income Tax Act, 1961 along with supporting documentary evidences during the appellate proceedings, I am constrained to confirm the AO's action of levy of penalty u/s 271 D of IT Act of Rs. 6,07,805/-."

5. The learned A.R for the assessee referring to chart filed by the assessee explaining each and every loan received from parties with reasons submitted that the assessee has accepted four loans from his wife Smt.Kamala, who is assessed to tax and disclosed transactions to the income-tax department and further explained reasons for accepting loans in excess of specified limit in contravention of provisions of section 269SS of the Act. According to the assessee, there was urgent requirement of funds for immediate business requirements and the assessee was unable to borrow loans through account payee cheques and thus, under unavoidable circumstances obtained loan in cash. Therefore, it cannot be said that there is violation of provisions of section 269SS of the Act. The learned AR further submitted that the assessee had also taken loan of Rs.2,93,805/- by demand draft and same has been taken by his wife at Indian Overseas Bank, Chrompet branch, Chennai, on behalf of M/s.Hyundai Motor India Ltd towards purchase of car. The Assessing Officer has treated said loan as cash loan.

The assessee had also explained reasons for taking cash loan from Mr. K.Srinivas amounting to Rs.50,000/- and according to the assessee, there was an urgent requirement to make fixed deposit to get tender. The assessee was not having sufficient time to make arrangement of funds through bank and thus, obtained cash loan from the party. But fact remains that the same has been repaid through account payee cheque. The learned AR further referring to loans taken from Shobi Chemicals in cash and repaid by cheque submitted that it is a genuine transaction and short term accommodation for business requirements. Therefore, he submitted that the Assessing Officer has erred in levying penalty u/s.271D of the Income Tax Act, 1961.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee could not make out a case of exception as provided under section 269SS of the Act, to exclude loans received in cash from the purview of penalty u/s.271D of the Act, and thus, there is no reason to deviate from the findings recorded by the authorities below to

delete penalty levied for contravention under the provisions of section 271D of the Act.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The provisions of section 271D contemplates penalty for contravention of provisions of section 269SS of the Act, for accepting loans or deposits in excess of prescribed limit otherwise than by way of crossed cheque / account payee demand draft. The only exception provided under the Act is to loan or deposit or specified sum taken or accepted from certain class of persons provided under the Act otherwise, question of exclusion of loans taken other than by way of crossed cheques / demand draft on the ground of genuineness is contrary to law as provided u/s.269SS of the Income Tax Act, 1961. Therefore, arguments of the assessee in light of genuineness of transaction for not levying penalty u/s.271D of the Act has been rejected.

8. As regards arguments of the assessee that it has obtained loans in cash as well as by way of demand draft, we find that the assessee has filed certain details in respect of one

loan taken from his wife amounting to Rs.2,93,805/- by demand draft no.427232 dated 30.07.2007 at Indian Overseas Bank, Chrompet branch, Chennai and handed over to M/s.Hyundai Motor Company Ltd. for purchase of car. If the claim of the assessee is correct that said loan was taken through account payee cheque or demand draft, then same cannot be considered in light of provisions of section 269SS to levy penalty u/s.271D of the Income Tax Act, 1961. Similarly, in respect of other loans taken from his wife Smt.Kamala and other parties, the assessee has filed certain explanation and argued that those loans were taken for urgent requirement of business, when he could not get loans through bank or cheques. These arguments are made for the first time before us. The assessee neither explained these facts before the Assessing Officer nor filed evidences. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for fresh examination of claim of the assessee in light of various evidences and arguments. Thus, we set aside order passed by the learned CIT(A) and restore the issue back to the file of the Assessing Officer and direct the

Assessing Officer to reconsider the issue in accordance with law.

9. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 11th April, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 11th April, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.p