

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

Sr. No.	ITA No. & Asst.Year	Appellant	Respondent
1-2.	1024 and 1025/Ahd/2019 AY 2012-13 & 2014-15	Shri Mohanlal Savjibhai Tilva PAN : AAYPT 4595 M	ACIT, Cent.Range Baroda.
3-4.	1026 and 1027/Ahd/2019 AY 2013-14 & 2914-15	Shri Vishal Mohanbhai Tilva PAN : ADNPT 9777 F Both having common address: At 301, Kishan Flats, 27/B, Shrinagar Society Akota. Baroda.	ACIT, Cent.Range Baroda.

Assessee by :	Ms.Urvashi Shodhan, Advocate
Revenue by :	Smt. Leena Lal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 30/05/2022
घोषणा की तारीख /Date of Pronouncement: 24/06/2022

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

These four appeals are by the above two assessees against respective orders of even dated 9.5.2019 passed by the Commissioner of Income-tax (Appeals)-12, Ahmedabad relating to the Asst.Year 2012-13 & 2014-15 and Asst.Year 2013-14 & 2014-15 vide which the Id.CIT(A) has confirmed levy of penalty under section 271D of the Income Tax Act, 1961 ("the Act" for short) imposed by

the AO. Since the sole issue raised in all these appeals is similar, for the sake convenience we dispose of all of them by this common order.

2. In these appeals, the assesseees have challenged imposition of penalty under section 271D of the Act. The details are as follows:

<u>Name of assessee</u>	<u>Asst.Year</u>	<u>Penalty Amount</u>
Shri Mohanlal Savjibhai Tilva	2012-13	Rs.10,00,000/-
-do-	2014-15	Rs. 5,31,000/-
Shri Vishal Mohanlal Tilva	2013-14	Rs.7,50,000/-
-do-	2014-15	Rs.1,00,000/-

3. A perusal of the orders of the Revenue authorities would reveal that facts in all these cases are similar and identically worded except change in the figures of quantum. Therefore, for the convenience of adjudication, we take facts from ITA No.1024/Ahd/2019 in the case of Mohanlal Savjibhai Tilva for the Asst.Year 2012-13.

4. Brief facts relevant for adjudication of the issue is that the assessee is an individual and having income from business and profession which included interest and remuneration from partnership firm, besides income from other sources. The assessee has filed its original return of income under section 139 of the Act for the Asst.Year 2012-13 on 30.1.2013 and declared total income at Rs.2,15,690/-. Subsequent to search operation under section 132 of the Act and in response to notice under section 153A, the assessee filed return on 9.7.2016 declaring the same income as declared in the regular return. In this return the assessee has not declared any undisclosed income, however, the returned income was accepted by the Id.AO. However, on going through the cash book of the assessee, it was revealed to the AO that the assessee had

received an amount of Rs.10.00 lakhs in cash from his HUF on 14.4.2011. Therefore, penalty under section 269SS was initiated separately for receiving loan in cash. The ACIT issued a show cause notice for violation of provisions of section 269SS to the assessee. In response to that the assessee replied that a cash loan of Rs.10 lakhs was received by the assessee from his HUF on 14.4.2011 in compelling circumstances in order to honour the posted cheques issued by him in his individual capacity. Due to shortage of time, he could not transfer Rs.10 lakhs from his bank account to settle posted cheque issued to various third parties and also to avoid rigorous criminal proceedings under the Negotiable Instrument Act. It was a onetime affair made by the assessee cash transaction exceeding Rs.20,000/-. Furthermore, the assessee in his HUF capacity is having a PAN AACHT 1050 M for more than ten years, and is regularly filing his return of income. The said cash transaction was duly recorded in the books of accounts maintained regularly by the HUF also. To prove the genuineness of the transaction, the assessee has filed confirmation letter, copy of Income-Tax Returns and contra account of the client. In fact the AO has accepted this cash transaction as genuine and no addition has been made under section 68 of the Act in the order passed under section 153A read with section 143(3) of the Act. Thus, the cash transaction was being done due to business exigency and extreme need of cash and was between family members i.e. individual to HUF. Thus, penalty under section 271D was not leviable as there was no contravention of section 269SS of the Act. He relied upon the judgment of jurisdictional High Court as well as Tribunal's decisions as follows:

- i) ***CIT v. Narvarlal Purshottamdas Parekh 303 ITR 5 (Guj)***

Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269SS - Assessment year 1991-92 - Where Tribunal found that amounts alleged to have been received in cash or paid in cash were mere book entries and were part of transactions on behalf of family members, it could not be said that there was violation of sections 269SS and 269T so as to attract penalty.

ii) CIT v. Panchsheel Owners Associations 88 taxmann.com 504 (Guj)

Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269SS - Where assessee-AOP borrowed cash loan of Rs. 40 lakhs from its promoter for acquisition of land, in view of fact that genuineness of transaction had not been disputed by lower authorities, so also importance and urgency of raising cash loan, Tribunal was right in deleting penalty under section 271D [In favour of assessee]

iii) CIT vs. Shreenathji Corporation 56 taxmann.com 439 (Guj)

Section 269SS, read with sections 273B and 271D, of the Income-tax Act, 1961 -Deposits - Mode of taking/accepting (Business need)- Assessee carries on business of construction of building and in course of such business large amount of labour charges and payments for raw material purchased from unorganized trading sectors and bricks etc. are required to be made after banking hours - If their demand for cash payment was not met they would cancel contract work and refused to complete work and would also prevent other contractors from undertaking work till their dues were settled - Whether since loan/deposits was taken in excess of Rs. 20,000 to meet urgent and immediate requirements of business, no penalty could be imposed - Held, yes [Para 5] [In favour of assessee]

iv) Maruti Nandan Finance Cap. (P) Ltd. v. ACIT 114 TTJ 142 (Ahd)

Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269SS - Assessment year 2002-03 - Where assessee's explanation for receiving Rs.5 lakhs in cash was that funds were urgently required for honouring cheques issued by one of its directors, there being a reasonable cause for accepting cash, penalty was not leviable on assessee.

5. The above explanation offered by the assessee was not accepted and the Addl.CIT levied penalty of Rs.10.00 lakhs for the Asst.Year 2012-13 for contravention of section 269SS of the Act. Similarly for the Asst.Year 2014-15 the assessee has taken cash loan of Rs.5,31,000/- on 5.7.2013 which was required to close RBS

bank account (formerly ABN Amro Bank). There also the ld.AO imposed penalty of Rs.5,31,000/- u/s.271D of the Act.

6. Against the order of the AO, the assessee preferred appeals before the ld.CIT(A). Before the ld.CIT(A), the assessee has reiterated his submissions as made before the AO. He further submitted that it was out of business exigency and extreme need of money, the assessee has taken cash loan from HUF, due to insufficient fund in his individual bank accounts, some cheques already issued to third parties could not be honoured, and therefore, in order to escape from the criminal proceedings under the Negotiable Instrument Act, the assessee had to immediately arrange urgent fund for depositing in the bank. Therefore, there were sufficient reasons for the assessee to take cash loan, and no violation of section 269SS of the Act. However, the ld.CIT(A) also not satisfied with the above explanation of the assessee, more so he was not convinced with details filed before him, by the assessee. The ld.CIT(A) accordingly confirmed the penalty orders levied under section 271D of the Act. Aggrieved further, the assessee is now before the Tribunal.

7. Before us, the ld.counsel, Ms.Urvashi Shodhan for the assessee reiterated submissions as were made before the lower authorities. He further submitted that the impugned transaction was duly recorded in the books of accounts of the assessee, and the assessee in his HUF capacity is assessed to tax for more than ten years. There was no adverse inference by the AO as to the genuineness of the transactions, the ld.AO accepted the impugned transaction and no addition has been made thereon. The cash was to be accepted due to compelling situations, and to honour various cheques already issued to third parties, so that for want of insufficiency of the funds, the post dated cheques issued to the

parties could not be bounced back and unnecessary litigations comprising therefrom including invocation of the action under the Negotiable Instrument Act could be avoided. It is further submitted that this was only an isolated case and one time affair during the entire financial year, and there is no reason for the Revenue to impose penalty under section 271D of the Act. The reasons narrated by the assessee are sufficient enough to drop the invocation of proceedings under section 271D read with section 269SS of the Act. In support of her arguments, the ld.counsel for the assessee relied upon the following judgments:

- i) CIT Vs. Sunil Kumar Goel, 183 taxman 53 (P&H)
- ii) CIT Vs. Saini Medical Store, 277 IR 420 (P&H)
- iii) CIT Vs. Parma Nand, 266 ITR 255 (Del)
- iv) Hemendra Chandulal Shah Vs. aCIT, ITA No.1129/Ahd/2010 order dated 6/9/2010 (ITAT-Ahd);
- v) Smt.Meera Devi Kumawat Vs. JCIT, ITA No.1201/JP/2019 order dated 21.10.2021 (ITAT-Jaipur);

8. On the other hand, the ld.Sr.DR, Smt.Leena Lal appearing for the Revenue supported the orders of the lower authorities and relied upon judgments viz. (i) Auto Piston Mfg. Co. Ltd. Vs. CIT, 38 taxmann.com 61 (P&H), (ii) CIT Vs. Chandra Cement Ltd., 74 taxmann.com 75 (Raj).

9. We have given our thoughtful consideration to the submissions made by the both the parties and also perused the impugned orders of the Revenue authorities. We find that the ld.AO has levied the penalty under section 271D read with section 269SS of the Act on the ground that the assessee has accepted cash loans and the reasons for accepting loan in cash were also not reasonable and sufficient to drop the proceedings. The intention of this provision is to bring down non-genuineness transactions. Section 271D

stipulates that if a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposits or specified sum so taken or accepted. Provisions of section 269SS for imposition of penalty under section 271D are applicable only in case of loans and deposits received by the assessee in cash exceeding limits prescribed therein. But such imposition of the penalty shall be subject to section 273B of the Act, which stipulates that no penalty shall be imposable on the person or the assessee, for any failure referred to in the said provision, if he proves that there was 'reasonable cause' for the said failure.

10. The case of the assessee was that the loan in cash was taken from his HUF on account of extreme business exigency and necessity of honouring post dated cheques issued to the third parties. Further at that time, the assessee was not having sufficient balance in the bank, which would otherwise attract provisions of Negotiable Instrument Act and therefore, he was in compelling situation taken the loan in cash from his own HUF. Besides, to prove the genuineness of the transactions, the assessee has filed Income Tax Returns, confirmation; contra ledger accounts. That apart the AO has neither doubted the impugned transaction nor any addition made in this behalf even under section 68 of the Act. Only the reason for the Revenue was that the receipt of the loan was in cash, which was in violation of section 269SS of the Act. Thus, the Revenue authorities imposed penalty, as if the provision of section 271D is mandatory, without considering the 'reasonable cause' explained by the assessee both during the penalty proceedings. We find that the explanation given by the assessee cannot be disregarded, more so, when it was a onetime affair to meet business exigency and urgent financial necessity. Further, the impugned

transaction was from his individual capacity to his HUF capacity. A reasonable and justifiable explanation has been rendered by the assessee for the impugned transaction, and therefore, imposition of penalty under section 271D of the Act was not warranted. For this, we are guided by decision of Hon'ble Bombay High Court in the case of CIT Vs. Triumph International Finance (I) Ltd., 22 taxmann.com 138 (Bom), wherein Hon'ble High Court held as follows:

“23. The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under Section 271E would have to be construed liberally depending upon the facts of each case.”

11. However, the case law relied upon by the ld.DR are clearly distinguishable on facts viz. in the case of Auto Piston Mfg. Co. P.Ltd. (supra), in which case, no business urgency was established by the assessee, and therefore, the Hon'ble Court confirmed levy of penalty. In the case of CIT Vs. Chandra Cement Ltd. (supra) business exigency in respect of cash loan was not being established, and therefore, levy of penalty was confirmed by the Hon'ble Court.

12. Thus, we are not inclined to support the view taken by the Revenue authorities. We delete impugned penalty imposed under section 271D of the Act, and allow the ground of appeal of the assessee.

13. Similarly, for the reasons stated hereinabove, we also allow identical ground raised by the same assessee in other appeal as well in ITA No.1025/Ahd/2019 for the Asst.Year 2014-15.

14. In ITA No.1026/Ahd/2019 and 1027/Ahd/2019 are the cases of Son of Shri Mohanlal Savjibhai Tilva where cash loan of Rs.3 lakh each has been availed from his wife on 14.4.2012 and 21.7.2012, and a sum of Rs.1.00 lakh was received from his father Mohan S. Tilva on 4.11.2012 for business exigency in honouring payment of post-dated cheques. The ld.counsel for the assessee further stated that Smt.Vidhi V. Tilva is assessed to tax and her PAN ALKPT 0243 M and she is filing return of income regularly for more than ten years and assessed before the same AO. Similarly, Father of the assessee Shri Mohan S. Tilva is also assessed to tax for more than 30 years and having PAN AAYPT 4595 M. Thus, cash loan have been availed by the assessee from the family members namely from his wife and father, which was not doubted by the Department at any point of time, and no addition was made by the AO while passing order under section 153A of the Act. Since the issue in these appeals is also identical, we allow both these appeals filed by the assessee for the reasons stated in ITA No.1024/Ahd/20109. In the result, all the appeals of the assesseees are allowed.

15. In the result appeals filed by the assesseees are allowed and penalty levied under section 271D are hereby deleted.

Order pronounced in the Court on 24th June, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 24/06/2022

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