

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.158/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

Gayatri Raj No.3, Shivasakthi, Vidyanagar, Denakanikotta Road, Hosur – 635 109.	बनाम/ Vs.	JCIT Hosur Range, Hosur.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AHVPG-5181-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Vasudevan (Advocate) – Ld. A.R
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Ravindra T. Mishra (JCIT) – Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	21-07-2022
घोषणा की तारीख / Date of Pronouncement	:	21-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 17-12-2021 in the matter of penalty levied by Ld. Assessing Officer [AO] u/s. 271D of the Act on 30-01-2019. The grounds taken by the assessee are as under:

- 1) The order of the National Faceless Appeal Centre(NFAC) dismissing the appeal without addressing the issue on merits is contrary to law, erroneous and unsustainable in facts of the case.

- 2) The NFAC ought to have appreciated that the assessee in response to the notices of hearing, e-filed the adjournment requests due to the pandemic and later on account of return filing activity of the auditor and hence ought to have granted reasonable opportunity and not dismissed the appeal for non-prosecution.
- 3) The NFAC ought to have seen that the order passed without adequate opportunity to the assessee was in violation of the principles of natural justice and hence the dismissal for non-prosecution was unjustified.
- 4) The NFAC ought to have seen that the notice for levy of penalty was barred by limitation under sec. 275(1)(c) of the Act and hence the impugned order is void and untenable in law.
- 5) The NFAC also ought to have seen that time limit for issuance of notice has to be seen in the context of sec. 275(1)(c) and that the notice u/s.271D issued after nearly 4 years of completion of the assessment was clearly time barred and the proceedings are untenable in law.
- 6) The NFAC erred in confirming the penalty levied u/s.271D of Rs.32,60,000 as there was no violation of the provision of u/s.269SS of the Act.
- 7) The NFAC further failed to appreciate that the cash borrowals are genuine and bonafide and were taken from the assessee's mother, brother and cousins who were all agriculturalists, and hence confirming the penalty levied was unjustified and untenable in law.
- 8) The NFAC further failed to appreciate that there are catena of decisions holding that the provision of Sec.269SS will not be attracted where the cash borrowals is from close relatives, since it constitutes a venial breach not attracting the harsh levy of penalty u/s 271D of the Act.
- 9) The NFAC further failed to appreciate that the cash borrowals from close relatives in this year was Rs.9,95,000 and was made for buying a land for personal purpose and hence there was a reasonable cause in accepting borrowals in cash from the relatives by the assessee.
- 10) The NFAC, in the alternative, ought to have considered the cash borrowals in this year alone for the purpose of applying the provisions of sec.269SS and the levy of penalty on the whole amount was unjustified on the facts of the case.
- 11) The NFAC in any view of the matter was not justified in dismissing the appeal for non-prosecution without adequate opportunity to file the submissions and further ought to have deleted the penalty levied u/s 271D and allowed the appeal.

As evident, the assessee is aggrieved by confirmation of certain penalty u/s 271D. The registry has noted a delay of 23 days in the appeal. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

2. The Ld. AR assailed the penalty on limitation ground. However, Ld. Sr. DR pleaded for dismissal of the appeal on the ground that the assessee failed to make any representation before first appellate

authority. Having heard rival submissions, our adjudication would be as under.

3. Upon perusal of penalty order dated 30.01.2019, it could be seen that the assessee was saddle with penalty u/s 271D for Rs.32.60 Lacs in view of the fact that the assessee contravened the provisions of Sec.269SS. Though the assessee preferred further appeal but the assessee failed to file any submissions despite various opportunities as noted in para-5 of the impugned order. Therefore, the appeal was dismissed for non-prosecution. Aggrieved, the assessee is in further appeal before us.

4. Though we concur with the submissions of Ld. Sr. DR that the assessee has remained negligent before lower authorities, however, keeping in view the principle of natural justice, we set-aside the impugned order and remit the matter back to the file of Ld. CIT(A) for adjudication by way of speaking order after affording adequate opportunity of hearing to the assessee.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 21st July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 21-07-2022
EDN/-

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

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