

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 2619/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2012-13)

Mr. Mayur P. Jain, 1170, Chaitya Tower Shivdas Marg, Mazgaon, Mumbai-400 010	बनाम/ Vs.	ITO 20(2)(2) 212, 2 nd floor, Piramal Chambers, Lalbaug Parel, Mumbai-400 012
स्थायीलेखासं ./जीआइआरसं ./PAN No. AEGPJ1871E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Devendra B. Harnesha, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Ashish Kumar, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	28.12.2022
घोषणाकीतारीख / Date of Pronouncement	:	28.12.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 17.08.2022, passed by National Faceless Appeal Centre (NFAC), Delhi in relation to penalty proceedings u/s 271(1)(c) for AY 2012-13.

2. Assessee is aggrieved by levy of penalty of Rs. 1,00,000/- made by AO and confirmed by Ld. CIT(A).

3. The facts in brief are that AO noted that assessee had shown loan from one of the party, Smt. Pistaben Sohanraj Sonigra. The addition was made by the AO on the ground that the said party is not showing the assessee as debtor for loan given to the assessee for Rs 1 lakh, whereas, the assessee has shown the same under the head 'unsecured loan'. Though the assessee has filed the balance sheet, etc. of the said party showing that the loan was coming from earlier years, however, AO has still levied penalty of Rs. 1 Lakh and the same has been confirmed by the Ld. CIT (A) also.

4. We have heard both the parties and perused the impugned order as well as material placed on record. Ld. Counsel for the assessee submitted that this loan was not received by the assessee during the year under consideration. This loan was received in the earlier years. In support, he filed the balance sheet of earlier years right from AY 2006-07 as this amount was received by the assessee in AY 2006-07 and the same was continuing till AY 2012-13. Once the loan is coming from earlier years, the provision of

section 68 could not have been invoked and therefore, the addition itself was unsustainable. Accordingly, we are of the considered view that the penalty cannot be levied on such addition. Thus, we delete the penalty.

5. In the net result, the appeal filed by the assessee stands **allowed.**

Orders pronounced in the open court on 28th December, 2022.

Sd/-

(S. Rifaur Rahman)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 28/12/2022

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai