

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.5394/DEL/2019
Assessment Year 2013-14

Devinder Gupta & Sons (HUF), E-567, Greater Kailash-II, New Delhi.	Vs.	CIT, Range-30, New Delhi.
TAN/PAN: AADHD7296J		
(Appellant)		(Respondent)

Appellant by:	Ms. Mansi Jain, Adv.		
Respondent by:	Shri Kumar Pranav, Sr.DR		
Date of hearing:	24	11	2022
Date of pronouncement:	17	01	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee seeking to challenge the penalty imposed amounting to Rs.3,40,000/- by the Assessing Officer under Section 271E of the Act and sustained by the CIT(A)-X, New Delhi for the Assessment Year 2013-14.

2. Briefly stated, the assessee has made a repayment of a part of loan during the year under consideration amounting to Rs.3,40,000/- in cash to one of its sister concern namely, M/s. DNB Properties Pvt. Ltd. (DNB). The assessment was framed under Section 143(3) of the Act. In the course of the assessment proceedings, the assessee furnished confirmation of the lender as required by the Assessing Officer. The Assessing Officer however noted that the act of repayment of loan in cash is in

violation of provision of Section 269T of the Act. Consequently, the penalty proceedings were initiated and penalty was imposed under Section 271E of the Act of the equal amount vide order dated 17.08.2017 by the Joint Commissioner of Income Tax.

3. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) took note of the submissions made on behalf of the assessee but however confirmed the penalty for alleged contravention of Section 269T of the Act.

4. Further aggrieved, the assessee preferred appeal before the ITAT.

5. We have heard the parties in length and considered the submissions advanced by both the sides. It is the case of the assessee that lender DNB has not conducted any business activities since last few years and was in dire need of funds to meet certain urgent business commitment to avoid litigation. The lender is a sister concern managed and controlled by the Karta of the assessee. Thus, the assessee responded to the request of the lender and deposited cash to the tune of Rs.3,40,000/- in the bank account of the lender company which was, in turn, used to repay the advance taken by the lender from one Shri Sushanto Mukherjee. These facts are verifiable from the account of the lender. It was further submitted that the net payable amount declared to have been received from lender has been found genuine and accepted in the course of the assessment proceedings by the Assessing Officer. Several decisions were relied upon to seek relief from the clutches of penalty imposed under Section 271E of the Act in the circumstances.

6. In the factual backdrop, we take note of the judgments rendered by the Hon'ble Gauhati High Court in the case of *CIT vs. Bhagwati Prasad Bajoria HUF*, (2003) 183 CTR 484 (Gauhati) wherein the Hon'ble Court took note of the object of introducing of Section 269SS as explained by the Hon'ble Supreme Court in *Assistant Director of Inspection (Investigation) v. Kum. A.B. Shanthi*, (2002) 255 ITR 258 (SC) and held that the legislature has given discretion to the authority in the matter of levy of penalty under Section 271D of the Act. The Hon'ble Court held that where a reasonable cause exists for transactions covered under Section 269SS, the penalty shall not be imposed merely because it is lawful to do so. Drawing parallel, same proposition would apply in the matter of provisions of Section 271E of the Act which is enacted on the similar footings.

7. Similar proposition was echoed towards existence of reasonable cause by the Hon'ble Delhi High Court in *Director of Income Tax vs. All India Deaf and Dumb Society* (2006) 198 CTR 376 (Del). In the backdrop of legal position, the facts and circumstances requires to be looked at in cumulative manner to ascertain the existence of *mala fide* if any.

8. It is an admitted position that the assessee had taken loan from the lender in the earlier years, a part of which has been repaid during the year albeit in cash. The amount of loan has been consequently reduced. A confirmation whereof from the lender has been filed. The assessment was carried out under Section 143(3) and no question on *bona fides* of the transaction was raised but however the penalty was imposed mechanically.

9. Having regard to the series of judicial precedents and the totality of the facts and circumstances noted above, we take a benign view in the matter and cancel the penalty imposed under Section 271E of the Act. The order of the CIT(A) is thus set aside and the penalty imposed is thus reversed and cancelled.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 17/01/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /01/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**