

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.22/GTY/2022
Assessment Year: 2016-17**

Surya Kant Mehta Q. No. T-32, New Quarters, Department of Botany, Mizoram University Campus, Aizwal-769 004, Mizoram (PAN:ASIPM7331G)	Vs.	Addl. Commissioner of Income Tax, Silchar Range
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manoj Tiwari, FCA
Respondent by : Shri N. T. Sherpa, JCIT

Date of Hearing : 06.06.2023
Date of Pronouncement : 09.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order passed by Ld. CIT(A), National Faceless Appeal Centre (NFAC) vide Order No. ITBA/NFAC/S/250/2022-23/1043028369(1) dated 13.05.2022 against the penalty order passed by Addl. CIT, Range-Silchar, Silchar u/s. 271D of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 27.03.2019 for AY 2016-17.

2. The sole issue in the present appeal is in respect of imposition of penalty of Rs.2,90,000/- u/s. 271D of the Act for accepting loan in cash from two individuals.

3. Brief facts of the case are that ITO, Ward-3, Silchar received information from the Intelligence & Criminal Investigation Wing (I&CI) of Income Tax Department in Guwahati that assessee had invested Rs.56,92,000/- in immovable property during the year and had accepted cash loans of Rs.1,40,000/- and Rs. 1,50,000/- from his elder brother Shri O. P. Mehta and brother in law Shri T. N. Singh respectively, in contravention of the provisions of section 269SS which calls for penal action u/s. 271D of the Act. The payments were reportedly made for the purpose of payment of stamp duty for purchase of the property, as noted in the impugned order. Explanations were called in the course of penalty proceedings initiated by Addl. CIT, Range-Silchar, Silchar on the proposal sent by ITO, Ward-3, Silchar.

3.1. In his submissions, assessee submitted that he had acquired an immovable property during the year under consideration for a value amounting to Rs.56.92 lakhs for which an amount of Rs.3,98,440/- was paid towards stamp duty. The entire purchase consideration in respect of the property was paid through banking channels as recorded in the registered sale deed. However, assessee borrowed an amount of Rs. 2.90 lakhs in cash from two individuals, both relatives, for the payment of stamp duty. Assessee further submitted that these cash loan transactions are genuine and the need/urgency of situation compelled him to accept cash loan instead of using banking channels.

3.2. It was submitted that Shri D. N. Singh is a government employee and brother in law of the assessee who had

withdrawn cash from his bank account and paid the same to the assessee. Also, Shri O. P. Mehta is an employee of Hi Tech Carbon, Renukoot (Aditya Birla Group) and elder brother of the assessee who had withdrawn cash from his bank account and paid it to the assessee. Assessee thus contended that the cash loan amounting to Rs.2.90 lakhs from two of his close relatives, used for the purpose of payment of Government stamp duty, is a genuine transaction. Further, these cash loans were repaid to the respective lenders through banking channel reflected in respective bank statement. According to the assessee, the cash loan transactions were done purely from the known and disclosed sources of income of the lenders. Agreement for purchase of property transaction was to be completed within a specified time and due to such time constraints, cash loans were accepted for payment of stamp duty. Thus, the main thrust of the assessee is on the genuineness of the transaction and the urgency due to time constraint which prompted him to accept cash loans.

3.3. Assessee prayed for immunity u/s. 273B of the Act which provides that no penalty shall be imposable on the person qua any failure if he proves that there was reasonable cause for such a failure and the assessee proves that due to the reasonable cause, he was prevented to take a loan otherwise by an account payee cheque or draft.

3.4. Ld. AO after considering the submission made by the assessee, concluded to impose a penalty of Rs.2.90 lakhs equal to the amount of cash loan taken by the assessee by holding that assessee had accepted cash loan in contravention to

section 269SS of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed the same. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel reiterated the same submissions as submitted before the lower authorities which are narrated above and for the sake of brevity, we are not repeating the same.

5. Per contra, Ld. Sr. DR submitted that assessee could not prove the genuineness of the transaction by furnishing bank accounts of the lenders.

6. We have heard the rival contentions and perused the material available on record. Facts relating to purchase of immovable property by the assessee is not in dispute for which payments made through banking channel is reflected in the registered sale deed placed on record. Assessee had taken loans in cash from his close relatives namely, Shri O. P. Mehta who is his elder brother and Shri D. N. Singh who is his brother in law, which is for the purpose of payment of stamp duty for the purchase of immovable property. The source of cash loan taken by the assessee and given by the two persons is from withdrawal from their respective bank accounts, both in employment and earned their income from salary. Further, assessee has repaid these loans from his bank account.

6.1. We take note of the provisions contained in section 273B which provides for reasonable cause if assessee proves that there was reasonable cause for the said failure then, penalty need not be imposed. In the given set of facts as stated above,

we find that there is a reasonable cause which exists, compelling the assessee to arrange for certain amount of funds, falling short of expenses for stamp duty liability for his purchase transaction of immovable property, owing to the time constraint imposed by the seller.

6.2. Further, we do find force in the submission made by the assessee that transaction of loan between close relatives does not attract the provisions of sec. 269SS if the assessee is able to establish genuineness of transaction and reasonable cause for borrowing in cash. For such a proposition, we place reliance on the judicial precedent of Hon'ble jurisdictional High Court of Gauhati in the case of CIT Vs. Bhagwati Prasad Bajoria (HUF) [2003] 263 ITR 487 (Gau) wherein it is held as under:

“Keeping in view the object of introducing section 269SS, the Legislature has given discretion to the assessing authority under section 273B of Income-tax Act to levy the penalty as provided under section 271D of the Act or not. Under section 273B if the court finds that there was a reasonable and sufficient cause for not imposing the penalty on the assessee in the given facts and circumstances of the case the penalty shall not be levied.

The facts which emerged in the case are that as the result of advancement of the loan by Umadutta Jhunjhunwalla on three different dates the assessee has executed the promissory notes in favour of Umadutta Jhunjhunwalla. The transaction of loan has found place in the books of account of the assessee as well as the lender of the loan. None of the authorities have reached the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It appears to us that the assessee felt need of money and thus he approached the money-lender for advancement of the money, the transaction is reflected in the promissory notes executed by the assessee in favour of the lender. When there is an immediate need of money the person cannot get such money from the nationalised bank to satisfy the immediate requirement. To satisfy the immediate requirement of money the person normally approaches the money-lender or his friend or relative who could lend money to him to satisfy his immediate requirement. In those circumstances it cannot be said that the assessee has entered into a transaction to avoid the

payment of tax or to defraud the Revenue. The element of mens rea is not borne out from the nature and the manner in which the transaction was carried out. In these circumstances we do not find any justification or reasonable cause to remand the matter for adjudication afresh by the Commissioner of Income-tax for consideration of reasonableness within the meaning of section 273B of the Act. In the facts and circumstances of the case, we hold that the Tribunal was justified and correct in law in upholding the judgment of the Commissioner of Income-tax in deleting the penalty of Rs.4,50,000 imposed on the assessee under section 271D of the Income-tax Act, though for different reasons. "

7. Considering the facts on record, justifying the genuineness of transaction and existence of reasonable cause as stipulated u/s. 273B, fortified by the judicial precedent of the Hon'ble jurisdictional High Court (supra), we unhesitatingly delete the penalty of Rs.2.90 lakhs imposed u/s. 271D of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open Court on 9th June, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 9th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), NFAC, Delhi
 4. CIT,
 5. DR, ITAT, Gauhati Bench, Gauhati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata