

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.152/RPR/2022
निर्धारण वर्ष / Assessment Year : 2012-13

Anil Manhare
930, Sidharth Nagar, Shivpara,
Ward No.34, Durg (C.G.)
PAN : BXUPM5084N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Ram Tiwari, Sr. DR

सुनवाई की तारीख / Date of Hearing :17.07.2023

घोषणा की तारीख / Date of Pronouncement : 02.08.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.06.2022, which in turn arises from the order passed by the Additional Commissioner of Income Tax, NFAC Delhi u/s. 271D of the Income-tax Act, 1961 (for short 'Act') dated 09.09.2021 for A.Y. 2012-13. The assessee has assailed the impugned order passed by the CIT(Appeals) on the following grounds of appeal before us :

“1. In the facts and circumstances of the case, Ld. CIT(A) erred in confirming the penalty of Rs.1,60,000/- levied by the A.O u/s.271D. The penalty levied by the A.O and confirmed by the Ld. CIT(A) is illegal, contrary to provisions of law and not justified.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. The AO observing that though the assessee during the year under consideration had purchased two plots at Haroda, District: Durg for Rs.1,60,000/- each; and also repaid a cash loan of Rs.1,90,000/- that was raised by him from his relative during the year under consideration itself for partly sourcing the aforesaid investment, but had not filed his return of income for the said year, thus, initiated proceedings u/s.147 of the Act. Notice u/s 148 of the Act dated 31.03.2019 was issued to the assessee. In

compliance, the assessee e-filed his return of income for AY 2012-13 on 16.04.2019 declaring an income of Rs. 1,56,000/-.

3. During the course of the assessment proceedings, the assessee on being queried about the source of his investment towards purchase of the aforesaid properties, submitted that the same was out of his personal savings and a cash loan of Rs.1.60 lac that was raised by him from his relative, viz. Shri Subhas Mohite. As the assessee failed to substantiate his aforesaid claim, the A.O vide his order passed u/ss. 143(3)/147 of the Act dated 08.12.2019 held the entire investment of Rs.3,32,100/- as having been sourced out of the assessee's undisclosed income and assessed his income at Rs. 4,88,100/-. Also the A.O while culminating the assessment initiated penalty proceedings u/s. 271D of the Act.

4. On a reference received from the A.O the Additional Commissioner of Income Tax, NFAC, observing that the assessee had raised a cash loan of Rs. 1.60 lac from his nephew, viz. Shri Subhas Mohite for making an investment towards purchase of property situated at Haroda, therein vide his order passed u/s. 271D of the Act dated 09.09.2021 imposed a penalty of Rs.1.60 lac on him, as under (relevant extract):

“4. In view of the facts stated above, the loan amount of Rs.1,60,000/- received in cash from his nephew Shri Subhash Mohite, admitted for the purpose of the second property registered on 28.12.2011, is treated as received in violation of the provisions of Section 269SS thereby attracting the penal provisions of Section 271D. Hence, the loan amount of

Rs.1,60,000/- received in cash is levied as penalty u/s.271D for the A.Y.2012-13. The demand has to be paid within 30 days of receipt of this order.”

5. On appeal, the CIT(Appeals) finding no infirmity in the view taken by the Additional Commissioner of Income Tax, NFAC upheld his order.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. As is discernible from the records the A.O had rejected the claim of the assessee that the investment of Rs.3,32,100/- made by him towards purchase of properties situated at Haroda was, inter alia, sourced out of the cash loan of Rs.1,60,000/- that was raised by him from his relative viz. Shri Subhash Mohite and had held the same as his undisclosed investment. In our considered view once the A.O had rejected the claim of the assessee that the investment of Rs. 3,32,100/- made by him towards purchase of two properties situated at Haroda was, inter alia, sourced out of the cash loan of Rs.1,60,000/- that was raised by him from Shri Subhash Mohite (supra) and had held the same as his unexplained investment, then there was no justification for the department to infer that the assessee had raised any such cash loan from the aforementioned person. Once the AO had concluded that no part of investment in the properties was sourced out any cash loan, but in fact it was the latters undisclosed income that was so utilized for sourcing the same, then, it is beyond comprehension that after having

rejected the aforesaid explanation of the assessee how the department could have adopted a view to the contrary and saddled the assessee with penalty u/s 271D of the Act. Once the source of money invested by the assessee has been given the color as that of unexplained income and accordingly brought to tax by the AO, thereafter the department could not have taken a contrary view and held that part of the said investment was sourced out of a cash loan raised by the assessee. At this stage, we may herein observe that except for the aforesaid explanation of the assessee as regards the source of investment in the aforesaid properties which had been rejected by the department, there is no independent material which would evidence that the assessee had raised any cash loan of Rs. 1.60 lac from the aforementioned person, viz. Shri. Subhash Mohite (supra)

8. Considering the aforesaid facts involved in the present case before us, we are of the considered view that now when the A.O had rejected the assessee's explanation that investment to the tune of Rs. 1.60 lac in the aforesaid properties was sourced out of the cash loan that was raised by him from his relative, viz. Shri. Subhash Mohite, and had held the same as having been sourced out of his undisclosed income, then the Addl. CIT could not have taken a view to the contrary and saddled the assessee with penalty u/s 271D for having carried out the aforesaid loan transaction, the existence of which in itself had been rejected by the AO, in a manner other than that prescribed under law. We, thus, in terms of our aforesaid observations set-

aside the order of the CIT(Appeals) and vacate the penalty of Rs.1,60,000/- imposed by the Additional Commissioner of Income Tax, NFAC u/s. 271D of the Act.

9. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 2nd day of August, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 2nd August, 2023
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.