

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.430/JODH/2018  
Assessment Year : 2011-12**

M/s ARUN PULVARISING INDUSTRIES, M.G. Road, Pratapgarh, Rajasthan PAN: AADFA0793K	Vs	ACIT, Chittorgarh, Rajasthan
Appellant / Assessee		Respondent / Revenue

Assessee by	Sh. Arun Padliya and Shri Abhinav Jaion, CAs
Revenue by	Ms. Nidhi Nair, JCIT-DR
Date of hearing	11.08.2023
Date of pronouncement	14.08.2023

**ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Udaipur dated 28<sup>th</sup> June, 2018 emanating from the penalty order under section 271E of the Act for assessment year 2011-12. The assessee raised the following grounds of appeal:-

*“01. That on the facts and in the circumstances of the case learned Addl. Commissioner of Income Tax and CIT(A), Udaipur erred in facts as well as in law confirming the penalty u/s. 271E of Rs. 3,90,000/- on the assessee firm without considering the*

*item of payment and assumed payment made to HUF (Arun Kumar Gandhi) as repayment of loan.*

*02. Learned CIT(A) erred in not holding that it was mutual, open and current account between assessee's firm and partner's HUF was not at all account of loan.*

*03. Learned CIT(A) erred in not accepting the fact that there was reasonable and bonafide cause u/s. 273B of the Act for entering into this transaction payment Rs. 3,90,000/- on 30.04.2010 for purchase of land.*

*04. Learned CIT(A) erred in not accepting the most honest and bonafide belief of the assessee's firm that it was not necessary to enter into transaction with partner's HUF by an account payee cheque, and there was absolutely no intention to commit breach of law.*

*05. The appellant firm seeks leave to raise any other ground which the facts and law applicable to this case may require for just and proper decision of the case.”*

### **Submission of Ld. AR**

2. Ld. AR submitted that M/s Arun Kumar Gandhi is Karta of Arun Kumar Gandhi (HUF). M/s Arun Kumar Gandhi is also a partner of assessee firm M/s Arun Pulvarising Industries. There is a current account of M/s Arun Kumar Gandhi (HUF) with the assessee firm. Ld. AR invited our attention to the ledger account of M/s Arun Kumar Gandhi (HUF) in the books of the assessee firm which was at page no. 5 of the paper book. Ld. AR explained that on 30.04.2010, assessee firm gave Rs. 3,90,000/- in cash to Arun

Kumar Motilal Gandhi (HUF). This cash was given as the HUF wanted to purchase land and there was no sufficient time for banking transaction as 27.03.2010 was a holiday on account of Mahaveer Jayanti, the other three days being the last day of the financial year were rush hours for the bank. Ld. AR, therefore, explained that it was not possible to issue cheque and then enter into the transaction of land purchase. Ld. AR explained that this fact was submitted before Ld. CIT(A). He invited our attention to the relevant part of the Ld. CIT(A's) order. Ld. AR took us through the purchase deed dated 30.04.2010 to demonstrate that HUF has purchased land. Ld. AR explained that for the said purchase, there was immediate requirement of the money and hence assessee give Rs. 3,90,000/- to HUF in cash. Ld. AR explained that there was a reasonable cause for cash transaction. Ld. AR also explained that there was no intention of tax evasion, as all the transactions are reflected in the account.

**Submission of Ld. DR**

3. Ld. DR relied on the order of the lower authorities.

**Findings & Analysis**

4. We have heard both the parties and perused the records.

5. The only issue for our consideration penalty under section 271E of the Act. The assessee has given Rs. 3,90,000/- in cash to Arun Kumar Gandhi (HUF). The Assessing Officer was of the opinion that it was repayment of loan in cash and hence levied penalty under section 271E. Ld. CIT(A) confirmed the said penalty. We have observed that assessee firm was having a current account in books of Arun Kumar Gandhi (HUF), copy of which has been filed at page no. 5 of the paper book. The scanned copy is as under:-

**IN THE BOOKS OF M/S. ARUN PULVARISING INDUSTRIES**  
**ASSESSMENT YEAR : 2011-2012**

**ARUN KUMAR MOTILAL GANDHI (HUF)**  
**CURRENT ACCOUNT**

DATE	PARTICULARS	AMOUNT	DATE	PARTICULARS	AMOUNT
01-04-2010	To Opening Balance	39187.00	05-03-2011	By Maturity of Life Policy Cheque	111150.00
30-04-2010	To Cash for purchase of Land	390000.00	28-03-2011	By Chque withdrawal from BOB	20000.00
05-05-2010	To TDS	8259.00	31-03-2011	By Interest	77500.00
05-03-2011	To Cheque for LIC Loan	40606.00	31-03-2011	By Tr. To Loan A/c.	347646.00
05-03-2011	To Cheque for LIP Paid	54687.00			
05-03-2011	To Ch. Deposit with BOB S/B. A/c	15857.00			
05-03-2011	To Withdrawal for Drawings	7700.00			
	<b>TOTAL (RS).</b>	<b>556296.00</b>		<b>TOTAL (RS).</b>	<b>556296.00</b>
		0.00			

6. From the perusal of the said account, one can understand that there were various transactions in the said account. One of the transaction was on 30.04.2010 of cash payment of Rs. 3,90,000/-.

7. We have observed that there was reasonable cause for said cash payment. Arun Kumar Gandhi (HUF) had purchased an

agricultural land on 30.04.2010 situated at Pratapgarh, Rajasthan. Copy of the registered sale deed was filed by the assessee during the proceedings. The land was purchased in rural area. There was public holiday on 28<sup>th</sup> March. Banks were over worked being end of financial year. Therefore, in our opinion, there was reasonable cause for cash payment to HUF.

8. The Hon'ble Rajasthan High Court in the case of ***Commissioner of Income tax vs. Manoj Lalwani*** 260 ITR 590 (Rajasthan) has held as under:-

*“4. As per section 269SS of the Act of 1961 after 30th day of June, 1984 no person is allowed to take or accept from any other person any loan or deposit otherwise than by account payee cheque or account payee bank draft, of amount of twenty thousand rupees or more. Section 271D of the Act of 1961 speaks of levy of penalty of a sum equal to the amount of loan or deposit so taken or accepted in ontravention of the provisions of section 269SS. A plain reading of section 271D gives an impression that if there is a contravention of the provisions of section 269SS, the assessee shall be liable to pay the penalty equal to the amount which has been taken as loan or deposit and there is no discretion left with the assessing authority to waive the penalty considering the facts and circumstances in which the loan or deposit was taken by the assessee. But when we read section 271D with section 273B of the Act of 1961 which begins with non obstante clause "Notwithstanding anything contained in the provisions of section 271D", it is clear that in spite of the provision of section 271D, the enactment following, namely, "no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure", will have its full operation. Section 273B permits the assessing authority not to impose a penalty*

*provided under section 271D of a sum equal to the amount of loan or deposit taken or accepted in spite of the breach of provisions of section 269SS wherein the person has to accept a loan or deposit or the aggregate amount of such loan or deposit by way of account payee cheque or account payee bank draft, if the assessee or the person proves before the assessing authority that there was a reasonable cause for not accepting the amount of loan or deposit by way of account payee cheque or account payee bank draft. Under section 273B a judicial discretion is left with the assessing authority not to levy a penalty under section 271D if the authority is satisfied that there was a reasonable cause for not complying with the provisions of section 269SS of the Act of 1961.*

*5. In the present case the Tribunal has found that the assessee is an exporter and was in urgent need of the money for complying with the time bound supplies and, therefore, he took a loan of Rs. 2,50,000 (Rs. two lac fifty thousand) from his brother-in-law Mukesh Manwani. Out of the loan so taken, an amount of Rs. 2,45,000 (Rs. two lac forty-five thousand) was immediately deposited in the Bank, which indicates that the amount of loan, in fact, was received by him from Mukesh Manwani. It was only to meet the emergent need of time bound supplies; the loan was taken as he did not have sufficient time and funds and, that there was no intention to violate the provision of section 269SS of the Act of 1961. The Tribunal, in these circumstances, has arrived at a conclusion that the cash loan was taken by the assessee in the exceptional circumstances and that it is a case of reasonable cause, as a consequence thereof set aside the penalty imposed by the revenue authorities. As we have already held that on a reasonable cause being shown, the assessing authority has jurisdiction not to impose the penalty and, therefore, in our opinion, the Tribunal has acted in accordance with the law in waiving the penalty imposed on the assessee by the revenue authorities.”*

9. The facts & circumstances of the case of Manoj Lalwani and assessee are identical. In the case of assessee also HUF on the same day i.e. on 30.04.2010 had purchased agricultural land.

Therefore, respectfully following Hon'ble jurisdiction High Court, since there was reasonable cause, we direct the AO to delete the penalty. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced on 14<sup>th</sup> August, 2023.

*Sd/-*

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

*Sd/-*

**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

Dated: 14/08/2023

*Sh.*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench