

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JABALPUR
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 196/Jab/2016
(A.Y: 2012-13)

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| ACIT, Satna, Madhya Pradesh. | Vs. | Shri Jammu Beg, M/s Mirza Transport, Main Road, Waidhan, Singrauli. Madhya Pradesh. |
| PAN/GIR No. : AEPPJ4134H | | |
| Appellant | .. | Respondent |

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| Assessee by : | None |
| Respondent by : | Shri Shravan Kumar Gotru, CIT-DR |

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| Date of Hearing | 12.09.2023 |
| Date of Pronouncement | 20.09.2023 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) -2, Jabalpur passed u/s 271D and 250 of the Act. The revenue has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in cancelling the penalty of Rs. 1,34,37,980/- levied by the JCIT, Range Satna on account of acceptance of cash deposit in violation of Sec. 269SS of the Act.*

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2. *On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have appreciated that the acceptance of cash deposit to the extent of Rs. 1,10,28,980/- as shown in the books of account of the assessee was in clear violation of provision of Sec. 269SS of the Act and penalty to the extent should have been confirmed.*

3. *That the appellant reserves the right to amend/alter any of the grounds of appeal/add other grounds of appeal at the time of hearing.*

2. The brief facts of the case are that the assessee is engaged in the business of trading of sand and transportation, The assessee has filed the return of income for the A.Y 2012-13 on 28.12.2012 disclosing a total income of Rs. 9,77,280/-. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO dealt on the facts with respect to unsecured loans accepted by the assessee and was not satisfied with the explanations and made addition of Rs 96,000/- u/sec 68 of the Act. Further, the AO found that the assessee has claimed various expenditure in the profit and loss account and most of the expenses are not supported with the proper vouchers and bills and hence made ad-hoc disallowance of Rs.1,00,000/-

and the assessed the total income of Rs.11,73,280/- and passed the order u/s 143(3) of the Act dated 26.11.2014.

3. Subsequently the AO has initiated penalty proceedings u/s 271D of the Act. In the course of proceedings, the AO found that the assessee has obtained cash loans from the Mrs Wahida Akhtar wife of the assessee aggregating to Rs. 1,34,37,980/-, Whereas the assessee has filed the submissions explaining that the transactions are made for the purpose of business exigencies and are not in the nature of loans but to meet the business requirements and explained the reasonable cause. Whereas the A.O. was not satisfied with the explanations and levied penalty of Rs. 1,34,37,980/- and passed the order u/s 271D of the Act.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, finding of the AO and deleted the penalty. Aggrieved by the penalty order, the revenue has filed an appeal before the Hon'ble Tribunal. And none appeared on behalf of the assessee.

5. We heard the Ld. DR submissions and perused the material on record. The Ld. DR submitted that the CIT(A) has erred in overlooking the various facts and information

and relied on the information submitted by the assessee and overlooked the findings of the Assessing. At this juncture, we consider it appropriate to refer to the findings of the CIT(A) in deleting the penalty at Para 6.1.8 to Para 7 of the order as under:

6.1.8 The next issue is whether there has been existence reasonable cause. The transaction is between the husband and wife. In fact the expenditure has been mainly incurred by the wife of the appellant on behalf of the assessee for payment to Government Department in connection with mining lease related to the business of the appellant. The other expenses are relate to purchase of land and construction of house. In normal course, the exigency in making cash payments for such expenses cannot be ruled out Where the explanation of the assessee that violation of provisions of s. 269SS was due to certain bona fide belief of the assessee is found to be acceptable, penalty under s 27D is untenable. [CIT vs. Saini Medical Store (2005) 198 CTR (P&H) 496 (2005) 276 ITR 79 (P&H)]. In COMMISSIONER OF INCOME TAX vs. T. PERUMAL (INDL.)(2014) 90 CCH 166 Chen HC. the assessee engaged in business of civil construction and had debited various expenses like payment of accounting charges etc.. The assessee submitted that he was a labour supervisor and had no resources to finance the construction and hence he resorted to take loans from friends at time emergency, particularly on Saturdays when labour payment shave to be made. He also made certain payments in cash with regard to purchase of civil construction material and accounting purposes without deducting tax at source. The AO disallowed the accounting charges paid u/s 40(a)(ia) and added entire amount u/s 68 and imposed penalty under Sections 271D and 271E. The tribunal deleted penalty imposed by AO. The High Court held that loans taken were genuine and same was for business

exigency. It was not case of undisclosed income. Reasonable cause for not levying penalty existed and Tribunal was justified deleting penalty. In the case of KRISHNAPATHAK (HUF) vs. INCOME TAX OFFICER, the ITAT, KOLKATA 'A' BENCH in ITA No. 2486/Kol/2002 dated 12th March, 2004 reported in (2004) 23 CCH 0129 Kol Trib: (2004) 90 TTJ 0940 for Assessment Year 1993-94, where the assessee (HUF) and the Karta of the assessee (HUF) were maintaining current account with each other and the transactions between them were in the nature of temporary adjustment/accommodation and there was no cash loan or deposit by the Karta of the assessee (HUF), the Department has not disputed the submission of the assessee (HUF) that no interest was paid or payable or received by either side, it has been held that by passing the journal entry by the Karta of the assessee (HUF) on account of expenditure incurred by him for giving gifts to relatives on behalf of the assessee (HUF) does not amount to loan or deposit within the meaning of s. 269SS and as such, no penalty is leviable under s. 271D. Accordingly, the penalty is cancelled. Shrepak Enterprises vs. CIT 1998) 60 TTJ (Ahd) 199(1998) 64 ITD 300 (Ahd), Muthoot M. George Bankers vs Asstt. CIT (1993) 47 TTJ (Coth) 434(1993) 46 ITD 10 (Coch), Dillu Cine Enterprises (P) Ltd. vs. Addl CIT (2002) 80 ITD 484 (Hyd) and Sun Flower Builders (P) Ltd. vs. Dy CIT (1997) 61 ITD 227 (Pune) relied on (Paras 5 & 6) The issue decided by the Hon'ble Tribunal is that Journal entry passed by the Karta of assessee HUF debiting the HUF account of expenditure incurred by him for giving gifts relatives on behalf of HUF did not amount to loan or deposit within the meaning of s. 269SS and accordingly, penalty under section 271D was not leviable. In the case of Jagdish Prasad Goyal Vs Asstt. Commissioner of Income-tax (2004) 2 ITJ 115 (Tribunal-Indore), it has been held that transaction was undertaken between family members Assessee borrowed a loan in three installments - Penalty imposed for violation of Sec. 269SS- CIT(A) confirmed the penalty Assessee preferred appeal before Tribunal - Tribunal

held There was a bona fide reason to borrow in cash, the transaction was undertaken between family members and on three dates. There was no violation of section 26955. hence penalty has been deleted. The Hon'ble High Court of Madras in the case of COMMISSIONER OF INCOMETAX vs. RATNA AGENCIES in Tax Case (Appeal) Nos. 11971198 of 2005 10th November, 2005 reported in (2005) 73 CCH0964 Chen HC. (2006) 284 ITR 0609 for A.Yr. 1989-90 concluded that Tribunal having agreed with the findings of the CIT(A) that the alleged contravention of ss. 269SS and 269T did not result in any unaccounted transaction and that the said transactions were made only for meeting the sudden demand of overdraft account, there is no reason to interfere with the findings of the Tribunal that there was reasonable cause for the assessee not strictly complying with the provisions of s. 269SS and, therefore, pena under ss 271D and 271E could not be imposed. Similarly, on similar facts. in the case of COMMISSIONER OF INCOME TAXI vs. M. YESODHA in Tax Case (Appeal) No. 320 of 2010 decide on 5th February, 2013, reported in (2013) 84 CCH 0068 Chen HC: (2013) 351 ITR 0265 for A.Yr. 2005-2006, where the Assessee had purchased a property for which cash loan in nature of gift was taken from her father-in-law-Penalty was levied thereof by AO on ground that amount in cash taken by assessee from her father-in-law was not a gift but only a loan-CIT(A) upheld decision of AO-ITAT upholding transaction between assessee and his father-in-law as genuine, deleted penalty thereof, the Hon'ble Madras High Court Held, tribunal had correctly considered ratio in case of CIT V. Lakshmi Trust (2008) 303 ITR 99 (Mad) wherein was held that once finding to genuineness of transactions is arrived at by the Tribunal on facts, finding recorded by Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise-Amount was paid by the father-in-law for purchase of property and source was disclosed during assessment proceedings-Tribunal had found that transaction between

daughter-in-law and father-in-law d a reasonable transaction and a genuine one owing to urgent of money to be paid to seller- Also, on reasonable cause being shown by assessee, imposable irrespective of fact whether reasonable cause is no penalty shall be specifically pleaded or not-Correctness of reasons given by assessee was clearly dealt by Tribunal Thus, if there was a genuine and bonafide transaction and taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, authority vested with power to impose penalty has a discretion not to levy penalty-Order of Tribunal did not suffer from mistake apparent from record-No interference with order of ITAT dismissed.

The Hon'ble High Court held that "Even though the assessee, had not taken a special plea of reasonable cause, it must be considered as applied to human action Where the transactions are bonafide, penalty cannot be imposed." (Para 8)

"In the light of the relationship between the assessee and her father-in-law, the Tribunal has rightly held that the genuineness of the transaction is not disputed, in which, the amount has been paid by the father-in-law for purchase of property and the source had also been disclosed during the assessment proceedings. If there was a genuine and bonafide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty." (Para 9)

"The Tribunal has rightly found that the transaction between the daughter-in-law and father-in-law is a reasonable transaction and a genuine one owing to the urgent necessity of money to be paid to the seller. We find that this would amount to reasonable cause shown by the assessee to avoid penalty under Section 271D of the income Tax Act" (Para10)

The Tribunal, referring to the decision of this Court reported in (2008) 303 ITR 99 (Mad) Commissioner of Income Tax V. Lakshmi Trust Company), has rightly allowed the appeal We do not find any error or infirmity in the order of the Tribunal to warrant interference. Accordingly, the substantial question of law is answered in favour of the assessee and this Tax Case (Appeal) stands dismissed. (Para12)

The Hon'ble Court concluded that "If there was a genuine andbonafide transaction and tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, authority vested with lower to impose penalty has discretion not to levy penalty.

The Hon'ble ITAT, PUNE THIRD MEMBER BENCH in ITA No. 362/Pn/1995 dated 7th March, 2003 in the case of INCOME TAX OFFICER vs. SUNIL M. KASLIWAL, reported in (2003) 22 CCH 0141 PuneTrib:(2003) 80 TTJ 0001 (TM) (2005) 94 ITD 0281 (TM): (2004) 2 SOT 0596 (TM) for Asst. Year 1990-91, where Assessee borrowed the money from his minor children and wife it has been observed that as far as minors are concerned, the assessee himself acted as the guardian, no other person was involved and that in the capacity of the guardian of the min children, he has given the loan and accepted it in the capacity of individual. It has been held that even assuming that there was breach, it was only a technical and venial breach. There is a common law maxim: "De non minim is curatlex". It means law does not take into consideration trivialities. In respect of the loan taken from the wife, the amount of loan is very small, normally it cannot be construed to be a transaction between the borrower and the lender, and that genuineness of the transaction was no doubted. Apropos the relation of husband and wife, the Tribunal noted that it is said in the Bible that "what God hath joined together man cannot cast asunder", and as such, there existed a mitigating circumstance. It has thus been concluded that the

penalty cannot be maintained in respect of the loans from minor children and wife.

6.1.9. In the light of the foregoing facts of the case, and the ratio laid down in the cases cited supra, I am of the view that the bona fide transactions of payments made by the wife of the appellant on the appellant's behalf did not amount to loans or deposits, but only for exigencies, , and for the venial breach of law in respect of the transactions between the family members did not amount violation of provisions of section 269SS of the Act to attract the levy of penalty under sec. 271D of the IT Act. Moreover, in the instant case of appellant, the source of money was explained ou of bank loan taken by Mrs. Wahida Akhater and that too it w only a transfer entry made by the appellant in his books of account on account of payments made by Mrs. Wahida Akhater wife of the appellant to the various persons on behalf of the appellant. No actual cash was accepted as loan or deposit by the appellant. In view of the above and having regard to the totality of the facts of the case, I am of the view that no penalty u/s 271D of the Act is leviable in this case and therefore, the leveraging penalty of Ra. 1,34,37,980/- is cancelled.

7.0 CONCLUSION: In the result, the levy of penalty is cancelled and the appeal of the appellant is allowed

6. The Ld. DR contended that the CIT(A) has accepted the information and submissions of the assessee filed with the evidence and has not called for the comments of the Assessing Officer before deleting the penalty. We find the assessee has filed the written submissions placed at Para 6.1.2 of the order along with the supporting explanations on the nature of amount used for the business purpose by

way of chart explaining each transaction. The CIT(A) has relied on the submissions and deleted the penalty and has not called for the remand report/comments of the assessing officer on the new facts emerging out of the assesses submissions in the appellate proceedings. Hence considering the facts and circumstances and to meet the ends of justice, we set aside the order of the CIT(A) and restore the entire disputed issues issue to the file of the CIT(A) for fresh adjudication on merits. Accordingly the grounds of appeal of the revenue are allowed for statistical purposes.

7. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 20.09.2023

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Jabalpur Dated 20.09.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)

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4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Jabalpur