आयकर अपीलीय अधिकरण "बी" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री वी. दुर्गाराव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.1623/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO Non-Corporate Ward-1(4), Chennai.	**बनाम**/ Vs.	**Dr. M.N. Kumaresan** Old No.13/3, New No.10, East Circular Road, Mandavelipakkam, Chennai-600 028.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AHUPK-6153-H**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri D. Hema Bhupal (JCIT)-Ld. Sr. DR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Shri S. Sridhar (Advocate)-Ld.AR

सुनवाई की तारीख**/Date of Hearing**	:	14-09-2023
घोषणा की तारीख /**Date of Pronouncement**	:	21-09-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-2, Chennai [CIT(A)] dated 21-03-2019 in the matter of impugned penalty levied by Ld. Assessing Officer [AO] u/s. 271D of the Act vide order dated 19-01-2018. The grounds raised by the Revenue read as under: -

1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.
2.1 The Ld. CIT(A) erred in giving relief to the assessee by deleting the penalty levied u/s. 271D of the Act.

2.2 The Ld. CIT(A) failed to appreciate that the assessee during the course of assessment proceedings had disclosed the receipt of Rs.1,50,61,250/- as cash advance received as loan, whereas the assessee had taken a different stand before the CIT(A) that it was a gift.
2.3 The CIT(A) failed to note that the assessee's aunt Smt. M.K. Pattammal had herself confirmed for having the given the above amount as loan/ advance only and when such being a case, the assessee without her contention cannot take a stand as a gift received from her which would be breach of trust.
2.4 The CIT(A) ought *to have* appreciated that the intention of the donor was only as loan/advance as per her own statement, irrespective of its treatment by the donee in his return of income.
2.5 The CIT(A) ought to have appreciated that even if it be a gift, the assessee was not prevented from executing a valid gift deed for such a huge sum, as he, being a practicing doctor, himself is well aware of the law of the land.
2.6 *The* relied upon decision of jurisdictional High Court in the case of Smt. Yesodha (351 *ITR* 265)(Mad) is not squarely applicable to the facts and circumstances of the case in as much as in that case the father-in-law had *given* gift to the daughter-in-law, which has been accounted as such, whereas in the instant case, the assessee had shifted his stand from receiving cash loan/advance *to* gift which is not appropriate.
3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the JCIT restored."

As is evident, the Revenue is aggrieved by deletion of impugned penalty u/s. 271D.

2. The Ld. Sr. DR submitted that the assessee received loan from his aunt but later categorized the same as gift which was nothing but mere after-thought of the assessee to avoid the impugned penalty. The Ld. AR, on the other hand, drew attention to the affidavit and other documents to support the submission that the amount received by the assessee was nothing but a gift and therefore, the findings rendered in the impugned order may not be disturbed. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower authorities

3.1 The assessee being a practicing Doctor in Plastic Surgery was assessed u/s.143(3) of the Act on 24-03-2016. The assessee's income

was assessed at Rs.31.58 Lacs as against returned income of Rs.14.41 Lacs. It transpired that the assessee made cash deposits in the bank account. While explaining the source of cash deposit amounting to Rs.1,50,61,250/-, the assessee submitted confirmation letter dated 23-11-2015 from his aunt Smt. M.K. Pattammal (assessee's mother's sister) wherein she had stated that she had given interest free advance to that extent to the assessee. Since the manner of acceptance of loan contravened the provisions of Sec.269SS, Ld. AO invoked penal provisions of Sec.271D.

3.2 During the penalty proceedings, the assessee submitted another letter dated 25-01-2016 from Smt. M.K. Pattammal in which she had stated that out of sale proceeds of certain agricultural land, she had given Rs.300 Lacs by way of cheque and another Rs.1,50,61,250/- in cash to the assessee as stated in her earlier letter dated 23-11-2015. The Ld. AO held that since the amount paid in cash was in contravention of provisions of Sec.269SS, penal provisions u/s.271D would get attracted. The assessee submitted another letter dated 18-07-2017 wherein it was stated that the amount was given by Smt. M.K. Pattammal without any intention of receiving it back and hence, it was only a gift and not an advance as stated in earlier letters dated 23-11-2015 & 25-01-2016. However, the said claim was held by the Ld.AO to be devoid of any merit. This plea was made for the first time and not made during assessment stage and therefore, the same was merely an afterthought. Accordingly, Ld. AO levied impugned penalty of Rs.1,50,61,250/- u/s 271D.

3.3 During the appellate proceedings, the assessee reiterated that the aforesaid amount was received as gift. The Ld.CIT(A) concurred with assessee's submissions and deleted the impugned penalty by observing as under: -

"4. Decision: In the course of assessment proceedings, the Assessing Officer observes that the appellant has a cash deposit of Rs.1,50,61,250/- claimed to be gift received from his aunt, Smt.M.K. Pattammal, during the Previous Year relevant to the Assessment Year under consideration. Consequently, the Assessing Officer referred the matter to the JCIT for levy of penalty u/s.271D for contravention of provisions of Sec.269SS. The appellant stated that the said cash of Rs.1,50,61,250/- was part of a gift of Rs.4.50 Crores given by his aunt Smt.M.K. Pattammal, that included a cheque payment of Rs.3,00,00,000/-, out of sale proceeds of agricultural lands. It is the contention of the appellant that the said amount was only a gift and not an advance as it was given without any intention of getting it back. After considering the arguments of the appellant, the JCIT levied penalty of Rs.1,50,61,250/-.

4.1 In the course of appellate proceedings, the appellant admitted that during the previous year relevant to the Assessment Year under consideration, he received gifts of Rs.3 crores by way of cheque and Rs.1.50 crores by cash from his aunt. The amount of Rs.4.50 crores was admitted by the appellant in the return of income by way of credit in his capital account. Further, the appellant contends that even if the given amount is considered to be an advance given to the appellant by his aunt, the provisions of sec.269SS would not apply. The appellant relied on the decision of jurisdictional High Court in the case of CIT Vs. Smt.M. Yesodha and claimed that the transactions were genuine and the identity of the lender was also clearly established.

4.1.1 I have considered the observations of the Assessing Officer and the submissions made by the appellant. It is an undisputed fact that the appellant received the amounts in cash and cheque on various dates from his aunt during the Financial Year 2012-13 relevant to the Assessment Year under consideration. There is no doubt as to the fact that this transaction was recorded in the accounts as "gift" which can be seen from the Capital Account of the appellant furnished for the year ended 31.03.2013 forming part of the Return of Income that was filed on 01.03.2014. It is also further noted that during the course of assessment proceedings the appellant obtained the confirmation letter dated 23.11.2015 from his relative and furnished it before the Assessing Officer. The assessment was completed accepting the said gift which was recorded as such in the Capital Account of the appellant.

As regards, the observation of the Joint Commissioner, in para 5 & 6 of her order dated 19.01.2018, wherein she stated that the appellant changed his stand from advance to gift only when confronted with the penal provision of the Income Tax Act with regard to cash transactions, it is seen that the appellant admitted the transaction to be a gift in his accounts at the time of filing his return of income on 01.03.2014. Thus, the appellant from the beginning considered the transaction as gift and never changed his stand at any point of time. It was

only the donor who had given the confirmation letter and submitted the affidavit clarifying the transaction in the course of assessment proceedings.
Further, it is also relevant here to refer to the decision of the jurisdictional High Court in the case of CIT Vs. Smt.M. Yesodha (351 ITR 265) (Mad). In that case, in the course of assessment proceedings, the Assessing Officer initiated penalty proceedings under section 271D on the ground that the assessee had obtained a loan of Rs.20.99 lakhs in cash from her father-in-law, which was in contravention of the provisions of section 269SS. During the penalty proceedings, the assessee claimed that the amount received in cash from her father-in-law was a gift and not a loan. The Assessing Officer held that the assessee received the amount as a loan and not as a gift, because the same was shown as a loan in the balance sheet of the assessee, which was filed along with the return of income. Hence, the Assessing Officer levied penalty. The Tribunal held that the transaction in question was between the father-in-law and daughter-in-law and the genuineness of the transaction was not disputed, in which, the amount had been paid by the father-in-law for the purchase of property. The Tribunal thus set aside the penalty order. On further appeal, the jurisdictional High Court observed as follows:
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 taxpayer 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.
In the instant case, 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, it would amount to reasonable cause shown by the assessee to avoid penalty under section 271D.
In view of above, impugned order passed by the Tribunal deleting penalty, was to be confirmed.
In view of the above, and respectfully following the view endorsed by the jurisdictional High Court in the case of CIT Vs. Smt. M. Yesodha (supra), I hold that the appellant is not liable for the penalty u/s 27ID. Therefore, the penalty of Rs.1,50,61,250/- levied u/s 271D is cancelled. The appellant succeeds on this ground.
5. As a result, the appeal is allowed.
Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

4. From the facts, it emerges that the assessee has received advances of Rs.4.50 Crores including cash receipt of Rs.1,50,61,250/- from her aunt. The case of Ld. AO is that the same was in the nature of advance and categorizing the same as gift was mere after thought to

avoid levy of impugned penalty. However, as noted by Ld. CIT(A), this transaction was recorded by the assessee in the accounts as "gift" which was evident from assessee's capital account as furnished along with return of income. To support the same, the assessee has obtained confirmation letter dated 23.11.2015 from his aunt and furnished it before the Assessing Officer. The assessee always considered the transaction as gift and never changed his stand at any point of time. It was only the donor who had given the confirmation letter and submitted the affidavit clarifying the transaction in the course of assessment proceedings. In affidavit dated 25-07-2017, it has been clarified by the donor as under: -

> 2) That during the financial year 2012-13, I had given amounts aggregating to Rs.,1,50,61,250/- to my nephew (sister's son) Dr. M.N. Kumaresan and these amounts were given by me to him with no intention of any repayment.
> 3) In the letter dated 23-11-2015, I had mentioned that amounts as interest free advance amounts which I intended to mean that it is not a loan and there is no necessity of any repayment and hence it was only a gift to my sister's son right from the inception.

Thus, the donor has amply expressed the intention that the advances were given merely as gifts since the inception. This being the case, the impugned penalty has rightly been deleted by Ld. CIT(A). Therefore, we do not find any reason to interfere in the same.

5. The appeal stands dismissed.

Order pronounced on 21st September, 2023

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्याियक सदस्य/JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 21-09-2023
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF