

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2018/Del/2022
Asstt. Year: 2013-14

Pramod Kumar Garg, C/o Mr. Sandeep Sapra Advocate C-763, New Friends Colony, New Delhi -110 025 PAN AGXPG6890K	Vs.	ITO, Ward 2(3)(5) Hapur.
(Appellant)		(Respondent)

Assessee by:	Shri Sandeep Sapra, Advocate
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	05/12/2023
Date of pronouncement	14/02/2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 04.08.2022 of the Ld. Commissioner of Income Tax (Appeals), NFAC Delhi ("**CIT(A)**") whereby he confirmed the penalty of Rs. 2,00,000/- imposed by the Ld. Addl. CIT Bulandsahar under section 271D of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year ("**AY**") 2013-14.

2. Briefly stated, the assessee e-filed his return on 30.09.2013 declaring income of Rs. 4,91,490/- for AY 2013-14. The Ld. ITO Ward-3(5) Hapur ("**AO**") completed the assessment on 15.03.2016 on total income of Rs.

56,48,590/- under section 143(3) of the Act wherein the Ld. AO initiated penalty proceedings under section 271D of the Act for accepting cash loan of Rs. 2 lakh in aggregate without any reasonable cause in contravention to section 269SS. He referred the matter to the Ld. Addl. CIT Bulandsahar who served show cause notice upon the assessee to which he submitted reply on 18.05.2016. Rejecting the explanation offered by the assessee, the Ld. Addl. CIT Bulandsahar imposed the impugned penalty against which the assessee filed appeal before the Ld. CIT(A) but without success. This has brought the assessee before the Tribunal.

3. The Ld. AR submitted that the transaction had taken place between father and son. The cash loan was taken to meet urgency. The urgency was lack of funds in business. The Ld. AR further submitted that the assessee was under the bonafide belief that Rs. 20,000/- per transaction is not in contravention of the provisions of section 269SS of the Act. Our attention was drawn to the copy of account of the assessee in the books of M/s. A.K. Trading Co. And copy of account of M/s. A.K. Trading Co. In the books of the assessee duly confirmed, filed before the Ld. AO/CIT(A).

4. The Ld. DR relied on the order of the Ld. CIT(A). He submitted that the assessee failed to demonstrate any urgency to take loan in cash.

5. We have considered the rival submission and perused the records. During penalty proceedings the assessee submitted the following explanation:

- “1. Assessee has not accepted loan of Rs. 2 Lacs at a time in cash from my son Shri Akhilesh Garg. Prop. M/S A.K. Trading Co. during FY 2012-13 as alleged*
- 2. by your honour in your above mentioned notice. Copy of A/c of M/S Pramod Trading Co. in the books of M/S A. K. Trading Co. for the period of 01/04/2012 to 31/03/2013 relevant for the AY 2013-14 is placed at page 4 from which your honour will find that there is no violation of section 26955 of LT. Act because the Assessee had not taken any loan/deposit exceeding Rs. 20,000/- at a time from M/S A. K. Trading Co. Confirmed copy of A/c of M/S Pramod Trading Co. in the books of*

M/S A.K. Trading Co. is placed at page 5. It is not in dispute that M/S Pramod Trading Co. is the sole proprietary concern of Sh. Pramod kumar as is evident from ITR, computation of total income and audited balance sheet and P & L A/c for the year under consideration, copies placed at pages 6-14. Similarly, Sh. Akhilesh Garg is the sole proprietor of M/S A.K. Trading Co and is separately assessed to tax at Hapur having PAN No. AGNPG76008 as is evident from ITR, computation of total income and balance sheet and P & LA/c for the year under consideration, copies placed at pages 15-18.

3. *In other words, the transaction was between father (Assessee) and his son. Moreover, it may not be out of place to mention-here-that-sometimes cash- loan is urgently required for carrying out business and therefore, cash loan was taken by me (Assessee) from my son. To prove father & son relationship, copies of their passports are placed at pages 19-21.*
4. *Your honour will appreciate that the object of introducing the provisions of section 269SS was to ensure that the taxpayer is not allowed to give false explanation for his unaccounted money. In Assessee's case, genuineness of the transaction is not in dispute as the loan of Rs. 2,00,000/- as on 31/03/2013 stands accepted by the AO. In other words, there is no charge made against the Assessee of introducing his own money and therefore, provisions of 269SS could not be invoked.*
5. *Without prejudice to above, even if provisions of section 2695S are applicable, then too, penalty may not be levied as I was under a genuine bona fide belief that I could take cash loan if it did not exceed Rs. 20,000/-*
6. *on a given date particularly from a family member. In other words, there was reasonable cause for accepting cash loan and therefore, the proceeding deserves to be dropped.*

Several decisions were relied upon in support.

6. No cogent reasons have been assigned either by the Ld. Addl. CIT and / or the Ld. CIT(A) to reject the assessee's explanation. It is not disputed that the transaction took place between the assessee and his son, both carrying on their independent business. Confirmed copies of account of the assessee in the books of M/s. A.K. Trading Co. Proprietary concern of his son and vice versa were brought on record. Genuineness of transaction has not been doubted. All the transactions were accounted for by the assessee and his son in their respective books of account. The impugned transaction

is reportedly to meet business exigency. We are therefore of the opinion that the assessee established the existence of reasonable cause for the impugned transaction and therefore the penalty is not exigible. We vacate it.

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

Order pronounced in the open court on 14th February, 2024.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 14/02/2024
Veena

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	