

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**I.T.A Nos.5624 & 5625/Del/2016
निर्धारणवर्ष/Assessment Year:2009-10**

Rajesh Kumar 1/3256, Ram Nagar, Mandoli Road, Shahdara, Delhi.	<u>बनाम</u> Vs.	JCIT Range-45, New Delhi.
PAN No. AGFPK1653G		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri Y.K. Kapur, Adv.
Revenue by	Shri Vivek Vardhan, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	03.01.2024
उद्घोषणाकीतारीख/Pronouncement on	21.03.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the assessee against the orders of the Ld.CIT(Appeals)-21, New Delhi dated 23.08.2016 and 29.09.2016 for the AY 2009-10 in sustaining the penalty levied u/s 271D & 271E of the Act for the contravention of the provisions of section 269SS & 269T of the Act.

2. Briefly stated the facts are that the assessee filed return of income on 01.09.2009 declaring income of Rs.2,27,090/-. The assessment was completed u/s 143(3) r.w.s. 147 of the Act on

28.02.2014 determining the income at Rs.64,22,260/-. In the course of assessment proceedings the AO noticed that assessee has received Rs.5 lakhs in cash from one Shri Vinod Verma on 05.04.2008 and repaid on 04.07.2008. Since this transaction is in contravention to the provisions of section 269SS & 269T of the Act the AO initiated penalty proceedings u/s 271D & 271E of the Act. A show cause notice was issued accordingly requiring the assessee to provide explanation as to why penalty u/s 271D/271E of the Act shall not be imposed. The assessee submitted a letter in DAK in the office of the Assessing Officer requesting for staying of penalty proceedings. Thereafter the AO issued fresh notice on 08.08.2014 and since there was no response from the assessee the AO passed penalty orders u/s 271D & 271E of the Act levying penalty of Rs.5 lakhs each on the contravention of provisions of section 269SS & 269T of the Act.

3. Assessee preferred appeal before the Ld. CIT(Appeals) contending that the assessee received Rs.5 lakhs towards advance against sale of land and since the transaction could not fructify the said amount was returned back to Shri Vinod Kumar. The assessee before the Ld.CIT(A) contended that as a matter of fact the AO summoned Shri Vinod Kumar u/s 131 of the Act and a statement on

oath was recorded in which statement Shri Vinod Kumar affirmed that he gave byana/advance of Rs.5 lakhs to the assessee on 06.04.2008 against purchase of land. Therefore, the assessee contended that since Shri Vinod Kumar in his statement recorded under section 131 of the Act deposed that he gave byana/advance to the assessee against purchase of land there is no reason to disregard the statement of Shri Vinod Kumar and treat the said amount of Rs.5 lakhs received by the assessee as loan in contravention of provisions of section 269SS & 269T of the Act and repayment of such loan. However, the ld. CIT(A) sustained the penalty levied.

4. Ld. Counsel for the Assessee reiterated the submissions made before authorities below. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

5. Heard rival submissions, perused the orders of the authorities below. On perusal of the order of the Ld.CIT(A), we noticed that the assessee made his submissions as under:

1. *“That the appellant has filed the statement of facts in support of the grounds of appeal. A copy of the same is enclosed.*
2. *That the Ld. Assessing officer has grossly erred in holding that the amount of Rs.5 lacs received from one Sh. Vinod Kumar and others was received as a loan and not as bayana as stated by the appellant.*

3. *That it is not in dispute that the amount was received from Sh. Vinod kumar and Ors. A confirmation letter signed by Sh. Vinod Kumar and his co-shares was duly filed confirming that the amount is paid as Bayana Copy enclosed The Ld. Assessing officer has summoned the said party u/s 131 of the Income Tax Act and statement record on oath.*
4. *That Sh. Vinod Kumar in his Statement on solemn affirmation in reply to the question put by the Ld. Assessing Officer clearly stated that the amount was given as Bayana on 6.4.2008 against purchase of land. Sh. Vinod kumar has also given his PAN No. in the statement from him is not in dispute and no discrepancy whatsoever was pointed out in the statement of Vinod Kumar.*
5. *That the Ld. Assessing Officer has in the order clearly stated that these are documents on record to show that the return of Bayana receipt was done through the father of Sh. Rajesh Kumar. Consequently there is no reason to disregard the statement of Vinod Kumar which was on solemn affirmation and the penalty leveled is therefore, totally uncalled for and may be cancelled.*
6. *That since amount is received as Bayana and not as loan the return of the same cannot be treated as repayment of loan in cash. The said penalty is also therefore, uncalled for.”*

6. On reading of the above submissions, we noticed that the AO issued summons u/s 131 of the Act to Shri Vinod Kumar and recorded his statement in which Shri Vinod Kumar deposed that he gave byana/advance to assessee on 06.04.2008 against purchase of land. The statement of Shri Vinod Kumar is not proved to be wrong by the Revenue. Therefore, the averments in the statement

recorded u/s 131 of the Act cannot be disbelieved. In the circumstances, the advance received by the assessee and its repayment cannot be treated as a loan and consequently cannot be said to be in contravention of the provisions of section 269SS and 269T of the Act. Thus, we direct the AO to delete the penalty levied u/s 271D & 271E of the Act.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 21/03/2024

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 21.03.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi