

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI, GAGAN GOYAL ACCOUNTANT MEMBER**

**ITA No.250/Mum/2024
(Assessment Year :2017-18)**

Shri Tarana Jagdish Singh M3/4, Breach Candy Apartments Bhulabai Desai Road Maharashtra-400 026	Vs.	Income Tax Officer Rang 16(1), Room No.439 Aayakar Bhawan Maharishi Karve Road Maharashtra-400020
PAN/GIR No.AOTPS8219N		
(Appellant)	..	(Respondent)

Assessee by	Shri Satyajeet Goel
Revenue by	Shri P.D. Chougule
Date of Hearing	02/07/2024
Date of Pronouncement	18/07/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/11/2023 passed by NFAC, Delhi in relation to the penalty proceedings u/s.271D.

2. The assessee is aggrieved by levy of penalty of Rs.16,00,000/- levied by the ld. AO.

3. The brief facts are that assessee had entered into a lease agreement for renting of her flat to one US resident, Mr. Leroy Wheeler Parkar. As per the leave and license agreement, assessee had received cash of Rs.16,00,000/- from the US resident as interest free refundable security deposit and advance rent which included amenities also. Since the licensee did not pay the rent and compensation and amenities on monthly basis, assessee had no option but to adjust the entire amount of security deposit towards rent / amenities. This amount was offered as income in the A.Y. 2017-18 and 2018-19. Since advance rent and securities were deposited in bank account in cash which is in violation of provision of Section 269SS, accordingly, penalty proceedings u/s. 271D was initiated. In the penalty order, the ld. AO held that assessee could not prove that there existed an emergency constituting a reasonable cause for violation of provision of Section 269SS and accordingly, he levied the penalty u/s.271D of the Act for the entire amount of Rs.16,00,000/-.

4. The ld. CIT (A) too has confirmed the said addition after holding as under:-

“5.7. After careful consideration of the submissions filed by the appellant, I am of the considered view that nothing prevented the licensee from opening a bank account when such huge financial transaction was to be done and also noticed that it is not a place where there are no banking facilities. The appellant could not explain urgency, commercial expediency or the reasons for not transacting through banking channel by way of documentary or any other satisfactory evidence.”

5. After hearing both the parties and on perusal of the impugned orders, it is seen that assessee had accepted the cash

of Rs.16,00,000/- from the US resident which included Rs.10,00,000/- as interest free refundable security deposit and Rs.6,00,000/- as advance rent. As per the leave and license agreement and amenities agreement, the property was given on monthly rent with amenities. The agreement was registered with a Joint sub-Registrar, Ahmednagar. Since, the US resident did not have any bank account in India, therefore, to be on a safer side and ensure that there is no default in the payment, assessee had taken refundable security deposit and advance rent in cash and deposited in her bank account. It has been further brought on record that the licensee did not paid at all any rent or compensation on monthly basis and therefore, assessee had no option but to adjust the entire amount of security deposit towards rent and compensation and offered it for income in her return of income. The assessee case was that in these facts where nonresident had no bank account in India, therefore there was a reasonable cause to accept rent in cash. The ld. CIT (A) held that nothing prevented the US resident from opening the bank account and did not accept the bonafide reasons of the assessee for accepting the cash.

6. We are unable to appreciate the reasoning of the ld. CIT (A), because, if the assessee had stated that the licensee US resident could not open his bank account in India and did not have any bank account to issue a cheque, then under these circumstances, if assessee has taken a cash and deposited in her bank account, same should have been treated as reasonable and bonafide ground for accepting the rent in cash. Assessee cannot

ask the US Resident to open a bank account in India only for accepting the rent in cheque. Here one important fact which has been brought on record is that, the renter did not made any monthly payment to the assessee which led her to adjust the refundable deposit. Thus there was a reasonable cause which falls within the exception of section 273B. If there is a genuine and bonafide reason for a transaction, then there is a discretionary power to the authorities, not to levy penalty. Here, in this case there was actually bonafide cause and reason for accepting the cash because the payer did not have any bank account in India being a foreign resident. Thus, we hold that penalty u/s. 271D should not be levied. Accordingly, in view of Section 273B, penalty levied by the ld. AO is deleted.

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

Order pronounced on 18th July, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 18/07/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

ITA No.250/Mum/2024
M/s. Tarana Jagdish Singh

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai