

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 873/Bang/2024
Assessment Year : 2015-16

Shri RamaReddy Dasharatha, No. 26, Lakshmisagara, Neralur Post, Anekal Taluk, Bangalore – 562 107. PAN: AEDPD5930M	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Jeevan J. Neeralgi, Advocate & Shri Balram .R. Rao, Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	11-07-2024
Date of Pronouncement	:	30-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 10.03.2024 passed by NFAC, Delhi for A.Y. 2015-16 on following grounds of appeal:

“1. On the facts and circumstances of the case, the Notice issued by the learned Addl CIT is opposed to the law in respect of penalty levied

2. The Ld. Addl.CIT has ignored the submissions made by the assessee.

3. The AO has specifically dealt with the issue of applicability of Sec 269SS and concluded the assessment after satisfying herself with the submissions made by the assessee. It is not a case that the matter has escaped the attention of A.O. The Addl. CIT ought to have issued notice u/s 263 before issuing show cause notice proposing to impose penalty under Section 271D. Due to this technical defect, the notice u/s 271D will not have legs to stand.

4. The Addl CIT ought to have considered the submissions made by the assessee that " amount is taken from family members or paid to family members" being genuine and bonafide in as much as they are reflected in the books of accounts of both the parties does not partake the character of loan or deposit and provision of sec.269SS or sec.269T are not applicable and consequently provisions of sec 271D are not attracted.

There are many decisions of the High Courts and Tribunals holding the same.

Some of them are discussed below.

- i. CIT vs. Natwarlal Purshottamdac Parekh.
- ii. Mohan Karkare vs CIT
- iii. ITO vs.Tarlochan.
- iv. CIT vs Heros Publicity Services.

The following decisions also where penalty levied u/s 271D for loans taken from HUF were deleted, being the cash transaction between the family members.

- i. Narayan Ram Chhabda vs ITO.
- ii. ITO vs Sumit M Kasliwal.
- iii. ITO vs.Rajendra Trading Co..

5. The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.

6. For these and other grounds that may be urged at the time of hearing, the appellant prays that the Honorable Commissioner of Income Tax (Appeals) may be pleased to drop the Penalty proceedings u/s 271 D as initiated by the Assessing Officer.

PRAYER: Therefore aggrieved by the said order, the appellant preferred this appeal praying for relief by dropping the Penalty proceedings cited above."

Brief facts of the case are as under:

2. The assessee is an individual having income from:

- a) Profits and Gains from Business
- b) Income from Other sources.

For A.Y. 2015-16, the assessee filed the income tax returns declaring the total loss of Rs.1,17,60,067/-.

2.1 During the assessment proceedings, the Ld.AO noticed that the assessee received unsecured loans worth Rs. 38 lakhs in cash from his family members. The Ld.AO called upon the assessee to justify the amount received, otherwise than by banking channel, in contravention to the provisions of section 269SS of IT Act which attracts penalty. The assessee gave clarification in respect of the loans received and also provided documents in support.

2.2 The Ld.AO after verifying the details and documentary evidences furnished by the assessee passed assessment order by accepting the explanation submitted by the assessee. Subsequently, the assessee was issued show cause notice on 11/06/2019 in respect of violation of provisions of sec.269SS that attract levy of penalty u/s. 271D. In response to the same the assessee submitted reply on 18/06/2019. After considering the details submitted by the assessee, the Ld.AO passed penalty order u/s 271D levying penalty as the assessee violated provisions of Section 269SS, and for want of reasonable cause as contemplated under provision of sec.273B of the Act.

Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A) who upheld the order of the Ld.AO.

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that there is no dispute whatsoever about the source of money. The transactions was among family members for genuine business exigency, and was purely temporary in nature. He submitted that the money was advanced without carrying any interest or repayment tenor. He thus submitted that the advances received are not akin to transactions between a borrower and a lender, and therefore the transactions are not in the nature of loans. The Ld.AR submitted that genuineness of the transaction was not doubted by the Ld.AO, and the transactions was between family members i.e. Mother, Wife and Sister-In-Law and assessee. He also submitted that all the family members being ladies normally keep cash in the house because of house works and that all are income tax assesseees, maintaining books of accounts. He further submitted that the transactions was reflecting in the accounts of all the parties. The details of their PAN Number and address etc. were available and furnished during scrutiny proceedings. It is also submitted that all the family members had given Letters of confirmation of transactions and balances, and submitted during the scrutiny. The Ld.AR submitted that the cash transactions between the family members was out of cash available as per their respective books of accounts, from time to time.

3.1 The Ld.AR thus submitted that although the transaction in cash was against the provisions of section 269SS, it was not against the intent of law, due to the exigency that existed wherein assessee required the cash to be accepted. He thus prayed for the penalty to be deleted due to the reasonable cause made u/s. 273B i.e. established for accepting the loan in cash.

3.2 On the contrary, the Ld.DR submitted that there is a contravention of the provisions of section 269SS due to which the penalty is attracted. He thus vehemently relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. Admittedly, it was a temporary advance that was taken by the assessee repaid during the year under consideration itself. The genuineness of the borrowings in the present facts is not in doubt by the authorities and the assessing officer is very well satisfied with the assessee's explanation regarding the identity and credit worthiness of the family members who advanced money to assessee in cash.

4.1 It is also pertinent to note that, the advances were taken by the assessee from his mother, his wife and sister-in-law, being genuine and bonafide, cannot partake the character of loan or deposit, as there was no interest payable by the assessee to the family members admittedly. Further, it is not the case of the revenue that the money received by the assessee from the family

members in cash is not used by the assessee for the business exigency and that assessee has not repaid back the same. The persons from whom assessee took money in cash are admittedly assessed to income tax and are maintaining books of accounts and the transactions are reflected in the accounts of all the parties.

4.2 Therefore the existence of reasonable cause as contented by the assessee are well founded. In the present facts of the case, the assessee has established by way of evidences that there is reasonable cause in taking money in cash and it did not amount to unaccounted monies, either in the hands of the assessee or the family members, from whom the monies were taken. To our mind, these requirements are sufficient to hold that penalty u/s. 271D is not justified. Accordingly, we therefore direct the Ld.AO to delete the penalty u/s. 271D of the act.

Accordingly, the grounds raised by the assessee stands allowed.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30th July, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th July, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore