

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.733/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Khaja Mazharuddin Ahmed Ansari Hyderabad PAN:AMXPA9201A	Vs.	Income Tax Officer Ward 14(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Akshay Surana	
राजस्व द्वारा / Revenue by: :	Shri Suresh Babu, DR	
सुनवाई की तारीख / Date of hearing:	26/08/2024	
घोषणा की तारीख / Pronouncement:	26/08/2024	

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 05/06/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The brief facts of the case are that the assessee filed his return of income for the A.Y 2017-18 on 31.07.2017 declaring total income of Rs.1,49,710/-. Subsequently, the assessee has filed revised return of income on 8.2.2019 and declared total income at Rs.13,44,640/-. The case was selected for scrutiny to

verify the source for the cash deposits into bank accounts. During the course of assesment proceedings, the Assessing Officer noticed that the appellant made cash deposit of Rs.8,97,000/- in SB Account maintained with City Bank, S.P Road, Secunderabad. The appellant had also deposited an amount of Rs.28,35,500/- in his SB Bank Account maintained with State Bank of Hyderabad, Moinabad. The Assessing Officer called upon the assessee to furnish necessary evidences to prove the source for cash deposits. In response, the assessee submitted that he has received an amount of Rs.18,15,000/-for sale of flat to Mr.Syed Yaseen. Further, an amount of Rs.6.00 lakhs received from Mr. Majeed Mohd. Khan, his nephew who is working as Mechanical Engineer in USA. The Assessing Officer accepted the source in respect of sale of property. However, did not accept the explanation of the assessee with regard to the amount received from Mr.Majeed Mohd. Khan for Rs.6.00 lakhs and therefore, made addition of Rs.6.00 lakhs u/s 69A of the I.T. Act, 1961 as unexplained money.

3. Thereafter, the Assessing Officer initiated penalty proceedings u/s 271D of the I.T. Act, 1961, for contravention of provisions of section 269SS of the I.T. Act, 1961 in accepting loan/deposit in excess of the prescribed limit. Therefore, called upon the assessee to explain why penalty should not be levied u/s 271D of the Act. The assessee submitted that the amounts claimed to have been received from Mr. Majeed Mohd. Khan has

been treated as income of the assessee and once, the amount has been treated as income of the assessee, then the same amount cannot be treated as loan for the purpose of provision of section 271D of the Act for contravention of 269SS of the I.T. Act, 1961 in accepting loan of Rs.6 lakhs from Mr. Majeed Mohd. Khan. The Assessing Officer after considering the relevant facts and also submission of the assessee observed that there is violation referred to u/s 269SS of the I.T. Act, 1961 in accepting loan of Rs.6.00 lakhs which warrants penalty u/s 271D of the I.T. Act, 1961. Therefore, rejected the explanation of the assessee and levied penalty of Rs.6.00 lakhs u/s 271D of the I.T. Act, 1961.

4. The assessee carried the matter in appeal before the learned CIT (A), but could not succeed. The learned CIT (A) for the reasons stated in their order dated 05/06/2024, rejected the explanation of the assessee and sustained the penalty levied u/s 271D of the I.T. Act, 1961.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding the penalty levied u/s 271D of the I.T. Act, 1961 of Rs.6.00 lakhs towards loan claimed to have been received from Mr. Majeer Mohd. Khan, though the Assessing

Officer has treated the said amount as income of the appellant u/s 69A of the I.T. Act, 1961. In this regard, he relied upon the decision of the Hon'ble High Court of Delhi in the case of Diwan Enterprises vs. CIT reported in (2000) 246 ITR 571.

7. The learned DR, on the other hand, supporting the orders of the authorities below submitted that there is a clear violation of provisions of section 269SS of the I.T. Act, 1961 in accepting loan, in excess of the prescribed limit, in cash and thus, the learned CIT (A) has rightly upheld the penalty levied by the Assessing Officer and their order should be upheld.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the Assessing Officer has not accepted the explanation of the assessee with regard to the source for cash deposit into bank account to the extent of Rs.6.00 lakhs claimed to have been received from Mr. Majeed Mohd. Khan. Further, the Assessing Officer has treated the said amount as income of the assessee u/s 69A of the Act, when the appellant is not able to prove the source for cash deposits. In other words, the Assessing Officer did not accept the explanation of the assessee with regard to the claim of loan received from Mr. Majeed Mohd. Khan. Once the Assessing Officer did not accept the explanation of the assessee with regard to the claim of loan from a person and the Assessing Officer had

recorded a finding that the amount in question was the income of the assessee, then the question of application of provisions of section 269SShaving been contravened was than loss in oblivious and could not have re-arisen at any subsequent stage or subsequent stages. Since the Assessing Officer has treated Rs.6.00 lakhs as unexplained money of the assessee and also taxed, in our considered opinion, the question of considering the said amount as loan received from Mr. Majeed Mohd. Khan and said transaction is in violation of provisions of section 269SS of the Act is incorrect. This legal proposition is supported by the decision of the Hon'ble Delhi High Court in the case of Diwan Enterprises vs. CIT (Supra). Therefore, I am of the considered view that, the Assessing Officer is erred in levying penalty u/s 271D of the I.T. Act, 1961 and the learned CIT (A) without appreciating the relevant facts simply sustained the penalty levied by the Assessing Officer. Thus, we set aside the order of the learned CIT (A) and direct the Assessing Officer to delete the penalty levied u/s 271D of the I.T. Act, 1961.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 26th August, 2024.

Sd/-

(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Hyderabad, dated 26th August, 2024.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 14(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order