

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.232/Nag./2022
(Assessment Year : 2011-12)

Prakash Jiwandas Wanjari
Plot no.G-102, Dhanashree Apartment
Tikekar Marg, Dhantoli, Nagpur 440 012
PAN – AAEPW5981A

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Range-5, Nagpur

..... Respondent

Assessee by : Shri Mahavir Atal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 08/10/2024

Date of Order – 25/10/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 22/07/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2011-12.

2. In its appeal, the assessee has raised following grounds:-

“1. That on the fact and in the circumstances of the case, the Ld. A.O. erred in levying penalty u/s 271D of the Act for accepting cash loans from friends and relatives in violation of section 269SS of the Act and the Ld. Commissioner erred in confirming the same.

2. Even after accepting the submissions of the Appellant, the Ld. A.O. without rejecting the claim of the Appellant levied penalty u/s 271D of the Act.

3. *The Ld. Commissioner and Ld. A.O. both have disregarded the provisions of section 273A of the Act where it mentioned that no penalty shall be levied under section 271D where the assessee proves a reasonable cause for undertaking transactions in violation of provisions of section 269SS.*

4. *The appellant craves to add, delete, insert and omit any ground or part of the grounds of appeal at the time of hearing of the appeal."*

3. During the course of hearing, at the very outset, the learned Authorised Representative appearing for the assessee unequivocally stated that he does not wish to press the additional grounds of appeal dated 29/07/2024, reproduced below:-

"(i) Whether the impugned order passed by the learned Officer under section 271D of the Act dated 07/02/2020, is without jurisdiction as proper satisfaction was not recorded by the Assessing Officer in the assessment order.

(ii) Whether the impugned order passed by the Learned Assessing Officer under section 271D is barred by limitation."

4. The learned A.R. has meticulously submitted by way of a note of arguments as below, delineating the contours and tenure of the dispute.

"2.1 The appellant is individual and salaried employee with Maharashtra State Power Generation Company Limited - MSPGCL (Mahagenco) and earned ONLY salary income for the year under appeal and in the preceding years. The appellant filed his return of Income in response to notice u/s 148 for AY 2011-12 on 23rd August, 2018, disclosing total income of Rs.3,55,623/- of which income from salary disclosed was Rs.4,55,623/-, income from other sources offered was Rs.NIL and deduction u/s 80C were Rs.1,00,000/-.

2.1 The Assessing officer issued online notice u/s 148 on 29th March, 2018, requiring the appellant to furnish income tax return for the AY 11-12. In response to the same the appellant filed his return of income on 23rd August, 2018 for AY 2011- 12.

2.2 The reason for reopening of the case and accordingly issuing notice u/s 148 was, that the appellant had made cash deposits aggregating to Rs.14,90,000/- in his bank account.

2.3 In response to the same, the appellant made a detailed written submission to the AO in the scrutiny assessment, stating that all these

deposits were made out of the cash loans accepted from some of his friends and relatives and this sum received by the appellant was mainly out of the proceeds of conducting agricultural activities by those lender members. The appellant even submitted the written confirmations from all the lenders before AO.

2.4 The AO did not immediately rely on the confirmations submitted by the appellant and to verify the genuineness and creditworthiness, he issued summons to all the lenders to be present in person before him for the verification of these loans. All the lenders including the legal heirs of the lenders (who are dead) duly appeared before the AO. In turn, the AO during the scrutiny proceedings had taken the statements on oath of all the lenders including the legal heirs about the cash loan given by them to the appellant and he also verified the creditworthiness of all the lenders who advanced the cash loans to the appellant.

2.5 After the statements recorded on oath and due verification of the evidences on record submitted by the appellant and the lenders, the AO completed the scrutiny assessment on 26th December, 2018 by passing the order u/s 147 read with section 143(3) by accepting the returned income of the appellant for AY 2011-12 and no addition is made on account of cash deposits made by the appellant in his bank account, as the AO was duly satisfied about the fact that all these deposits were made from the cash loan accepted by the appellant and they are from the genuine and explained sources.

2.6 Thereafter, the LAO on 07th February, 2020 passed order u/s 271D of Income Tax Act, 1961 for accepting cash loans of Rs. 14,90,000/-.

2.7 In respect of the above, the appellant again submitted all the details submitted during the scrutiny assessment to the LAO now and also requested him that closing the assessment proceedings by accepting the return income clearly means that the AO after satisfying him about the genuineness and creditworthiness of the lenders he accepted the return income for AY 2011-12 offered by the appellant. Further, the AO is convinced about the true & fair sources of income from which cash loans were given to the appellant and did not raise any objection regarding the same. He agreed that the cash deposited is not out of any undisclosed income or ruled out any involvement of black money in this transaction of cash loan. Therefore, he accepted the return income filed by the appellant.

2.8 Further, as the AO was convinced about the genuineness of the credit entries of cash deposit in bank account as cash loans accepted by the appellant, hence he has not make any addition u/s 68 or 69 of the Act.

2.9 The AO in the original assessment accepted the contention of the appellant, the Addl./Joint CIT now has initiated and levied the penalty u/s 271D of the Income Tax Act, 1961 just to penalize the genuine and unintentional mistake of the appellant even though due to this transaction of the appellant there was no loss to revenue was found either by AO or LAO.

2.10 It is worth to mention here that, the basic intention of the legislature for bringing into act the provisions of Section 269SS is to curb

the circulation of black money into the system. This fact is already accepted by the department by the series of judgments passed by the various courts of law in this regards. In the case of the appellant, he has proved this fact and the AO in the scrutiny assessment was convinced about the genuineness and creditworthiness of the persons giving such cash loans by recording statements on oath of all the lenders. Therefore, the act of the LAO to levy penalty u/s 271D on the appellant is illegal and invalid.

2.11 The AO in Para No. 4 said that the reply submitted by the assessee was without any merit since assessee is also having taxable salary income and therefore is not covered by the exception granted to cash transactions between 2 persons having only agricultural income.

2.12 The LAO here has only pointed out the only about the strict provision of the section, but he has missed the intention of the legislature to bring this provision and provisions of section 273B of the same Income Tax Act 1961, he did not accepted the genuineness and creditworthiness verified by the AO in the scrutiny assessment which has clearly proved that there is no involvement of black money or unexplained sources in this cash deposit by the appellant, he also overlooked the submission of the appellant that it is unintentional mistake of appellant he also sideline the judgments of the various courts in favor of the appellant's unintentional act which caused no loss to revenue. The LAO here failed to prove any loss incurred or caused to revenue. Therefore the act of the LAO is extremely harsh on the appellant (salaried person) who is unaware of these harsh provisions and more particularly when there is no loss to revenue is pointed out by the LAO.

2.13 The AO in Para No. 5 mentioned that, the assessee submitted subsequent submissions vide letter dated 27.12.2019 filed in tapal wherein he had submitted that the Assessing Officer had accepted his return of income after being satisfied about the genuineness of the loans and credit worthiness of lenders. The assessee further submitted that he is a salaried employee and was never exposed to the intecase of the provisions of direct tax law related to ban on acceptance of cash loans or cash deposits. The said cash was accepted with the sole intent to use as working capital in farming. The assessee has laid emphasis on the fact that he was ignorant about the provisions of law and that no penalty can be imposed when his conduct was not dishonest. The assessee has relied on various decisions but the same are not acceptable for following reasons. The basic principal laid down in law is that ignorance as a defense in normal circumstances. If it is so, it is very easy for any person who can put forward ignorance as a defense though he was actually aware of the law and its full consequences. Therefore, the policy of law has always been to reject the plea of ignorance of law.

2.14 The LAO here did not consider the reasonable cause as mentioned in the provision of Section 273B which are as follows:

Notwithstanding anything contained in the provisions of clause (b) of sub- section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB,

section 271H, section 271-1. section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 2724, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

From the above reading of provisions of Section 273B, it is clear that the section itself says that where the assessee proves that he had reasonable grounds for failure to comply with certain provisions of the act, then he shall not be imposed with any penalty. Section 271D has also been referred in the same section. Hence, no penalty shall be levied on the appellant since he had proved his reasonableness to not comply with the provisions of Section 269SS.

2.15 Further, in para 6 of the Order u/s 271D of the Income Tax Act, 1961, the AO referred to the case law of The Hon. Mumbai Income Tax Appellate Tribunal, Special Bench in Deepak Sales & Properties Pvt. Ltd Vs ACIT dated 13.06.2018 which held that it is not enough for the assessee to show that the transaction of taking loan/deposit by cash is genuine or bonafied. It has also to be shown that there was reasonable cause u/s 273B for the assessee being unable to take the loan/deposit by account payee cheque or account payee bank draft.

2.16 In this regards, the appellant would like to submit that it is a decided fact in many case laws of various ITATs and Courts which say that if the assessee is able to prove a reasonable cause and his intention was not to act against the law and no loss to revenue is caused, then the AO should levy any type of penalty on him. In the appellant's case the AO has in the scrutiny assessment proceedings never doubted the genuineness of the appellant's submissions and also the fact that the appellant was actually not aware of the provisions of the Income Tax Act, 1961 being a salaried individual and never being exposed to any of the provisions of law. Accordingly, levy of penalty by LAO u/s 271D of Income Tax Act, 1961 is invalid. The following judgments are relied on by the appellant to justify his claim.

2.17 In support of the same, the appellant has relied on the following decisions:

- i. Mumbai G bench of ITAT in the case of Zodiac Developers P Ltd (ITA No.31/Mum/2011 dated 10.10.2014), wherein the Bench has, inter alia, observed that if the Assessing Officer has not doubted the genuineness of the transaction and if no addition is made u/s 68 of the Act, penalty cannot be imposed u/s 271D of the Act.
- ii. Hon'ble Supreme Court in the case of Asst. Director of Inspection (Investigation) Vs. Kum. A.B. Shanthi (255 ITR 258)(SC) wherein it was held that "...that (1) if there was a genuine and bonafide transaction and (2) if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power. The existence of a genuine or

bona fide transaction is not sufficient to attract the relief under section 273B of the said Act. It must also be established that for some bona fide reasons the assessee could not get a loan or deposit by an account payee cheque or account payee bank draft."

- iii. *CIT v. Sunil Kumar Goel (2009) 315 ITR 163 (Puj. &Har.), it has been held that cash transactions with sister concern which had no tax effect, established 'reasonable cause' under section 273B of the Act, therefore, no penalty under section 271D is leviable.*
- iv. *The Hon'ble Supreme Court in the case of Kum. A.B. Shanthi (supra) has clearly laid down that if there is a genuine and bona fide transactions and the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power. In view of the above observations, I am of the opinion that no penalty under section 271D of the Act can be validly levied in this case. Accordingly, I cancel the impugned penalty.*

2.18 Moreover, the genuinity of the transaction of cash loans accepted by the appellant can be seen from the bank statement itself. The bank account in which the appellant had deposited the cash loans clearly show that the appellant had received the cash loans and had immediately deposited the same in his bank account and utilized the same for payments towards College fees of his daughters, repayment of loans of which the payment was required to be made immediately to close the interest burden on him which causing his livelihood difficult and also used in purchase of flat (house property as earlier mentioned). Below is tabulated the dates of deposit and consequent utilization of loans:

Sr. no.	Date of Deposit of Cash	Amount Deposited	Date of drawing	Amount Withdrawn	Purpose of drawing
1.	15/04/2010	15,000			
2.	15/04/2010	3,00,000			
3.	23/04/2010	30,000			
4.	10/06/2010	1,75,000			
5.			21/07/2010	4,50,000	College Fees of daughter
6.	07/08/2010	70,000			
7.	09/08/2010	3,00,000			
8.			17/08/2010	3,00,000	Loan repaid to ICICI Securities Ltd.
9.			29/12/2010	1,00,000	Loan repaid to ADIT M.
10.	10/02/2011	3,00,000	10/02/2011	3,01,306	For flat purchase
11.	03/03/2011	35,000			
12.	28/03/2011	2,69,000	28/03/2011	4,00,000	For flat purchase

	TOTAL	14,94,000		15,51,306	
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The AO also in the same Para No. 6 contended that The assessee has submitted that the cash loans were used solely as working capital for agriculture. But on perusal of the assessment records it is seen that his mother Smt. Devkibai has submitted affidavit dated 11.10.2018 wherein she has stated that her late husband had given loan of Rs. 4,30,000/- to the assessee to enable him to purchase a house property and for his medical treatment. The assessee is therefore giving contradictory statements regarding the purpose of the cash loans and hence his explanation is not satisfactory.

20 With reference to this the appellant wishes to submit that he has already stated in his submission about the no knowledge of income tax act, he is facing such type of enquiry for the 1st time in his life time and therefore he was under tremendous stress and fear. He has not prepared his reply from any expert consultant, therefore, he may have missed certain facts to be written in his reply. But as the bank statement is on record and the AO and the LAO has duly verified the same. When the bank statement is already on record and duly verified which discloses the use of money deposited in the bank account as tabulated above. The stand of LAO clearly states he was prejudiced and biased to levy this penalty u/s 271D.

2.21 When the evidences are on record which are verified and accepted by the AO, the LAO's action to levy penalty is nothing but change of opinion and therefore he has raised the issue which differs from the fact. Therefore, the LAO here should have passed the order on facts and evidences available before him, but just to penalize the appellant he brushed aside all these facts and chosen only lines which favored levy of penalty. The LAO here should have considered complete and total facts and evidences records which he did not consider, therefore the act of the LAO is illegal, invalid and bad in law.

2.22 Further, the LAO did not raise any objection about the genuineness of the affidavit submitted by the appellant's mother, even the AO in initial assessment did not challenge the same. Thus it implies that LAO had accepted that the cash loans were accepted by the appellant from his father. The appellant and the AO and the LAO never denied the fact that appellant had not accepted cash loans from his father the difference is only about the purpose of loan and not the loan accepted.

The LAO here missed that the cash loan accepted by him from his father only and no one else and this fact is not denied. Therefore, challenging just the use of money stated partly correct by the appellant and due to stress and fear and unawareness he failed to mention complete and entire point to point use of the amount deposited. The LAO also failed to appreciate the fact that all money taken as loan in totality is deposited in bank account only and all the payments were made from there, clearly indicates the intention of the appellant. The LAO here failed to appreciate reasonable cause in the acceptance of loan in cash, genuineness and creditworthiness of lenders is not correct.

2.23 Moreover, the provision of section 269SS was brought under the statute intending to determine the assessee of justifying unaccounted cash. As such the object of the provision of section 269SS was to discourage the assessee to justify their unaccounted money by taking cash entries from different persons. In the case on hand, the genuineness of the transaction was not doubted by any of the authorities AO and LAO. Therefore, the penalty cannot be levied under section 271D of the Act. Section 271D nowhere levies penalty on the purpose for which the cash loans are accepted.

2.24 Regarding the Para No. 7 of the order, the appellant wishes to submit that the appellant has already in the above discussion proved his reasonableness to accept cash loans. Also, the AO had counter questioned from all the lenders who

confirmed that the appellant had accepted cash loans from them and the AO did also after proper verification of all the facts closed the assessment proceedings and accepted that the appellant had accept cash loans in good faith. Also, merely having bank accounts of the giver and taker of cash loans does not imply that they are bound to have knowledge of the provisions of various acts and penal actions for their contraventions and therefore the provision of section 273B is provided in the Income Tax Act, 1961. Hence, the LAO is wrong in saying that since the appellant himself and the lenders were operating bank account should have been aware of the provisions of the act.

2.25 From the preceding discussion we note certain facts as detailed under:-

1) The assessing officer did not doubt the genuineness of the transaction. Otherwise the same should have been treated as unexplained cash credit under section 68 of the Act.

2) The transaction was carried out with the relatives and close friends of the appellant.

2.26 It is important to refer to the Circular issued by the CBDT Bearing No. 387 dated 06-7-1984 which reads as under:-

CIRCULAR No. 387

Explanatory notes on the provision of the Finance Act, 1984.

BENAMI

LOANS AND DEPOSITS

SECTION 281A

269SS

276DD

(xiv) Prohibition against taking or accepting certain loans and deposits in cash

32.1 Unaccounted cash found in the course of searches carried out by the Income Tax Department is often explained by taxpayers as representing loans from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and taxpayers are also able to get confirmatory letter from such persons in support of their explanation.

32.1 With a view to countering this device, which means taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new s. 269SS in the Income Tax Act debarring person from taking to accepting, after 30-6-1984 from any other persons any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. 10000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or the aggregate amount of such loan and deposit is Rs. 10000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs. 10,000 or more. The prohibition will also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date of which such loan or deposit is proposed to be taken is Rs. 10,000 or more.

2.27 From the above we note that the provision of section 269SS was brought under the statue to discourage the assessee to justify their unaccounted money. However, in the case on hand, there is no allegation that the assessee has introduced unaccounted money in his business. Thus, keeping in view the object of the provision of section 269SS of the Act the cash transaction which is genuine cannot be brought under the net of tax under the provision of section 269SS of the Act.

2.28 From the above circular, it is evident that provisions of Section 269SS were brought for the purpose of curbing the transactions of black money. The provisions of Section 273B clearly say that if the assessee proves reasonable cause for not complying with any of the provisions of Income Tax Act, 1961, then he shall not unnecessarily be liable to any penalty because levying of such penalty shall cause undue hardships to the assessee.

As from the above submission, reasonable cause is proved in case of the appellant therefore unintentional noncompliance of provisions of Section 269SS shall be considered as mere mistake. accordingly, the main section i.e. Section 269SS may not applicable then the corresponding penal provisions of Section 271D i.e. penalty for non-compliance with section 269SS shall not applicable.

2.29 The appellant has relied on the decisions of following case laws:

i. Shailesh Gopalbhai Akbari v. Addl. CIT, ITA No. 666/Rjt/2014 which gave the judgement that Provision of section 269SS was brought under the statute to discourage the assessee to justify their unaccounted

money. However, in the instant case, there was no allegation that assessee had introduced unaccounted money in his business. Thus, keeping in view the object of the provision of section 269SS the cash transaction which was genuine could not be brought under the net of tax under the provision of section 269SS. Moreover, transactions between the relatives and sister concern were not subject to the provisions of section 269SS. Therefore, as the genuineness of cash transaction had not been doubted, the penalty levied under section 271D was not sustainable.

ii. *Sri Rajiv Manharlal Duseja v. Asstt. CIT* ITA No. 2323/Bang/2018 in which it was said that Tribunal has considered an identical issue in the case of *Smt. Deepika v. Addl. CIT* in (L.T. A. No. 561/Bang/2017, dt. 13-10-2017) and held that the transactions between family members would not attract penalty under section 271D. Assessee had taken loan from his father and paternal aunt, who were family members. Family transactions would fall within the meaning of "reasonable cause" under section 273B. Therefore, no penalty could be levied under section 271D.

iii. *Gopal S. Pandith v. Jt. CIT* ITA Nos. 480 to 489, 496/Bang/2020 held that Assessee had made transactions of taking loan from his wife, son and daughters, who were family members and, therefore, provisions of sections 269SS and 269T were not applicable. Therefore, no penalty could be imposed under sections 271D and 271E.

2.30 Moreover, the appellant himself and both he and his parents are salaried employees having only salary income and agriculture income. They were not aware of the provisions of Income Tax Act, 1961 and even though they operated bank accounts were unaware of provisions of Section 269SS.

2.31 The learned Assessing officer has not considered the submission of appellant and by not taking into consideration the totality of facts and circumstances, levied penalty by issuing order under section 271D. No infirmity is found in action of LAO in this regard. Penalty determined is unwarranted, excessive and unjustified.

2.32 Observing the above mentioned facts, the appellant had accepted cash loans from relatives & close friends only due to urgent requirement of funds as explained above. Therefore, demand raised by AO for penalty u/s 271D of Rs. 14,90,000/- is unjustified.

2.33 It is very well proved that the AO, with prejudice mind, has levied penalty u/s 271D on the appellant without in-depth and complete acceptance of the evidences on record. The LAO is not himself clear on what basis (purpose) penalty u/s 271D is to be levied which should be considered as vague. The Learned Assessing officer here failed to consider 269SS, 271D and read with 273B in totality. Therefore, the penalty order passed by the Ld/ AO is with prejudice mind is bad in law, untenable and required to be deleted."

5. Per-contra, the learned departmental representative vehemently submitted that the order of passed by the learned CIT(A) need not be disturbed, as there was no reasonable cause to obtain loan in cash. Further, he said that online transfer is easily available. He also submitted as below by way of a written submissions:-

"The Authorised Representative of the assessee has relied upon the decision of the Hon'ble Supreme Court of India, in the case of Commissioner of Income-Tax, Panchkula v. Jai Laxmi Rice Mills Ambala City in civil appeal nos. 1457 of 2008 & 3614 of 2012 vide order dated-November 20, 2015 reported in [2015] 64 taxmann.com 75 (SC). The Hon'ble Supreme has held as under:

2. The Hon'ble Supreme Court in para-5 has held as under:-

"As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed".

3. The assessment orders passed by the AO at Ambala have been called for and annexed to this submission.

4. The Assessing Officer, while passing the original order dated 18.03.1996, had mentioned at page 8 of the assessment order that "Penalty proceedings u/s 271E for making payment in cash to Sri Kailash Bhanot in violation of provisions of section 269T are being referred to Deputy Commissioner of Income Tax, Ambala Range, Ambala, separately".

5. Thus, the Assessing Officer had pointed out the transactions in cash but did not record his satisfaction on initiation or levy of penalty but only intimated the DCIT (The then Range Head competent to decide the penalty) about violations of provisions under section 269T of the Income Tax Act 1961.

6. The AO while passing the order consequent to setting aside by the Ld CIT(Appeal) had mentioned in the office note that "Regarding violation of section 269T of I.T.Act, 1961 a proposal for levy of penalty has already been sent to the DCIT, Ambala Range, Ambala and the DCIT imposed the same which was confirmed by the learned CIT(Appeals), Shimla vide his order IT/208/95-96/SML(C) dated 14.7.97. Hence no action is called for at present".

7. Thus, there was no requirement to note satisfaction by the AO, where penalty was already levied.

8. Thus, it can be concluded that appropriate facts are not put forth before the Hon'ble Supreme Court while pleading the case of Jai Laxmi Rice Mills.

9. In view of the above facts, the decision of the Honourable Supreme Court cannot be applied to any of the penalties levied u/s 271D or 271E of the Income Tax Act, 1961.

10. Submitted for kind consideration. These submissions are being made on the basis of documents made available by ITO, Ambala on mail."

6. Since the additional grounds are being not pressed, the written submissions by the learned Departmental Representative are inconsequential and hence rejected. We further do not ascribe his view that online transfers were popular in the financial year 2010–11. Exactly similar matter was before the Co-ordinate Bench of the Tribunal, Chennai Bench, in Mani Sundaram, ITA no.899/Chny./2023, order dated 07/02/2024, which held through the Judicial Member, who had authored the order as follows:–

"5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the Assessing Officer levied penalty under section 271D of the Act for the reason that the assessee has received loan amount in cash in contravention of the provisions of section 269SS of the Act. Before the Assessing Officer, against the show cause notice under section 271D of the Act, the assessee has filed a detailed written submission vide letter dated 20.09.2021 and 20.10.2021 stating that the cash loan received from the close relatives viz., wife, father-in-law & mother, were treated as gift. However, the Assessing Officer has ignored the above explanations and confirmations furnished by the lender and levied penalty under section 271D of the Act. On appeal, the Id. CIT(A) dismissed the appeal of the assessee.

6. We have perused the details furnished by the assessee, wherein, the assessee furnished copies of the confirmation letters from the lender, which were filed before the authorities below and find that assessee's father-in-law as well as assessee's wife, who have confirmed that the loan amount shall be treated as gift. The assessee's mother passed away and produced death certificate. Moreover, the assessee has shown reasonable cause for receiving money towards purchase of machineries. Thus, we are of the opinion that the explanation offered against show cause notice before the authorities below were reasonable and therefore, levy of penalty under section 271D of the Act is untenable. Moreover, on

an identical facts and circumstances in similar issue, in the case of Ms. Nanda Kumari v. ITO (supra), the Hon'ble Jurisdictional High Court has also observed and held as under:

"9. In our considered view, the crucial aspect to be considered is as to whether the assessee had shown reasonable cause for having received money in cash in contravention of the provisions of Section 271D of the Act. The Assessing Officer had no material to show that the case, as projected by the assessee, was false or for that matter, there was no transaction between the assessee and the said Mr.Natesan In the absence of any material to disbelieve the said property transaction, all that is required to be seen is as to whether the explanation offered was reasonable. Admittedly, the amount was borrowed by the assessee from her maternal uncle and maternal aunt

10. In more or less identical circumstances, a Division Bench of this Court granted relief to the assessee by dismissing the appeal filed by the Revenue in the case of CIT Vs. Smt.M.Yesodha [reported in (2013) 351 ITR 265]. In the said case, the assessee claimed to have taken a loan of Rs. 20,99,393/- from her father in law for purchasing a property. The Assessing Officer initiated penalty proceedings under Section 271D of the Act on the ground that the assessee had obtained the said loan in cash from her father in law, which was in contravention of the provisions of Section 269SS of the Act. The assessee contended that the amount received in cash from her father in law was a gift and not a loan. The Assessing Officer rejected the said contention and found that it was a loan and not a gift because the same was shown in the balance sheet of the assessee filed along with the return of income. Accordingly, the Assessing Officer levied penalty equal to the loan amount. This was challenged by the assessee before the CIT(A), who dismissed the appeal and confirmed the order passed by the Assessing Officer. The assessee filed an appeal before the Tribunal, which allowed the assessee's appeal and while doing so, the Tribunal followed the decisions

(i) of the Tribunal in the case of M.Raju Vs. ACIT [ITA.No.899/Mds/2006];

(ii) of the Pune Bench of the Tribunal in the case of ITO Vs. Sunil M. Kasliwal [reported in (2005) 94 ITD 281]; and

(iii) of this Court in the case of CIT Vs. <http://www.judis.nic.in> Lakshmi Trust Co. [reported in (2008) 303 ITR 99].

and held that in the facts and circumstances of that case, the levy of penalty was not warranted. The Tribunal further held that the transaction between the father in law and the daughter in law was a genuine transaction and this was not in dispute because the amount was paid for purchase of a property. Before the Division Bench, the Revenue contended that the assessee had nowhere pleaded any reasonable cause as contemplated under Section 273B of the Act and that therefore, the Tribunal was not right in holding that the genuineness of the transaction was not disputed.

11. Even before us, Mrs.R.Hemalatha, learned Senior Standing Counsel submits that the provision namely Section 273D of the Act uses the expression 'reasonable cause' and not the expression

'sufficient cause' and that the Authorities below rightly found that the reason given by the assessee was not a reasonable cause.

12. However, a similar contention was rejected by the Division Bench in the decision in the case of Smt. M. Yesodha wherein it was held that even though the assessee had not taken a specific plea of reasonable cause, it must be considered as applied to human action and where transactions were bona fide, penalty could not be imposed.

13. In the case on hand, the assessee had shown a cause for having received the amount in cash. Therefore, if the assessee had shown a cause, the burden shifts on the Assessing Officer to establish that the cause shown <http://www.judis.nic.in> is not a reasonable cause by examining the cause shown and establish that it lacks bona fides. In the instant case, there is no such finding recorded by the Authorities below or for that matter by the Tribunal. Admittedly, the transaction in the instant case is between the assessee and her maternal uncle and aunt and there is nothing on record to show that the transaction lacks bona fides or the assessee came forward with a false case. In the result, we are of the considered view that the case on hand does not warrant levy of penalty under Section 271D of the Act.

14. Accordingly, the appeal filed by the assessee is allowed and the order passed by the Tribunal is set aside. The substantial questions of law are answered in favour of the assessee. No costs.

Since facts are identical and respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Ms. Nanda Kumari v. ITO (supra), we direct the Assessing Officer to delete the penalty levied under u/s section 271D of the."

7. Here also, transactions have taken place between family members and friends who can be considered as members of the family. The transaction is akin to a gift or a mere contribution to tide over temporary needs of a family for daily sustenance. Hence, penalty is deleted.

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

Order pronounced in the open Court on 25/10/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 25/10/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur