

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA Nos. 120 & 121/Del/2023
Assessment Year: 2010-11

Shri Mahesh, S/o Shri Charan Singh, Village Ghamroj, near Devi Mandir Distt. Gurgaon-122018. PAN: ATFPM 1595 E	<u>Vs</u>	Income-tax Officer, Ward-2(4), Gurgaon
APPELLANT		RESPONDENT
Assessee represented by	Shri Shantanu Jain, Adv.; & Shri Prateek Kumar, adv.	
Department represented by	ShriSanjay Kumar, Sr. DR	
Date of hearing	13.11.2024	
Date of pronouncement	29.11.2024	

ORDER

PER SATBEER SINGH GODARA, JM:

These assessee's twin appeals ITA nos. 120 & 121/Del/2023 for assessment year 2010-11 arise against Commissioner of Income-tax Appeals)-1, & Commissioner of Income-tax Appeals)-2, Gurgaon's as many orders dated 31.05.2019 & 31.01.2019 passed in case nos. 111/2018-19 & 429/17-18, in proceedings u/s 271D and 143(3) read with section 147 of the Income-tax Act, 1961, hereinafter referred to as the 'Act'.

Heard both the parties at length. Case files perused.

2. Delay of 1269 and 1389 days in filing of the instant twin appeals is condoned as per the assessee's condonation averments and keeping in mind the

fact that the same also include time period from 15.3.2020 to 19.10.2020 , which has already been directed to be excluded for all purposes by the hon'ble apex court in its land mark decision in Cognizance For Extension Of Limitation, In re. (2022) 441 ITR 722 (SC).

3. I now proceed to deal with the relevant facts wherein the assessee is aggrieved in quantum appeal ITA no. 121/Del/2023 that both the learned lower authorities have erred in law and on facts in taking recourse to section 148/147 proceedings, thereby treating cash deposits of Rs. 8,00,000/- deposited in his bank account as unexplained u/s 68 of the Act. The penalty appeal ITA no. 120/Del/2023, on the other hand, is directed against learned lower authorities' action levying 271D penalty of Rs. 9.50 lakhs on the ground that he had violated section 269SS of the Act in accepting cash loans.

4. Both the parties could hardly dispute the clinching fact that the entire issue has arisen on account of the assessee having claimed to have availed cash loans of Rs. 17.50 lakhs from one Shri Bhoop singh. There is no denial to the fact that the said person had duly put in appearance during scrutiny and deposed in assessee's favour to have given the entire amount of Rs. 17.50 lakhs, which stood restricted to Rs. 9.5 lakhs only on the ground that his share in the sale deed could prove only 9.5 lakhs. I note in this factual backdrop that the said person had co-executed the sale document and both of them received cash sale consideration amounting to Rs. 17.50 lakhs, which in turn, was stated to be given to his relative i.e. the assessee. All these facts sufficiently indicate that both the lower authorities have rejected the assessee's foregoing explanation going by the said relative's share only than the entire explanation which had to be considered in the light of given probabilities and the relation between the parties. I, thus, see no reason to sustain the impugned

addition of Rs. 8 lakhs in assessee's quantum appeal ITA no. 121/Del/2023. This appeal succeeds in very terms.

5. Coming to the assessee's penalty appeal ITA no. 120/Del/2023 seeking to delete 271D penalty of Rs. 9.5 lakhs representing cash loans from one Shri Bhoop singh, I find that the same represents cash sale consideration and, therefore, it would not attract violation of section 269SS of the Act, deleted accordingly. This appeal ITA no. 120/Del/2023 is accepted.

No other ground or argument has been pressed.

6. These assessee's twin appeals ITA nos. 120/Del/2023 and 121/Del/2023 are allowed.

Copy of this common order be placed in respective case files.

Order pronounced in open court on 29.11.2024

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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