

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri Waseem Ahmed, AM & Shri K. Narasimha Chary, JM]

**I.T.A No. 240/Kol/2014**  
**Assessment Year: 2009-10**

Sarbani Chakraborty  
(PAN: ADKPC2488D)  
(Appellant)

Vs. Joint Commissioner of Income-tax  
Range-29, Kolkata.  
(Respondent)

Date of hearing: 05.10.2016  
Date of pronouncement: 21.10.2016

For the Appellant: Shri Rajeeva Kumar, Advocate  
For the Respondent: Shri Anand Kr. Singh, JCIT

**ORDER**

**Per Shri K. Narasimha Chary, JM:**

This appeal by assessee is arising out of order of CIT(A)-XVI, Kolkata vide Appeal No. 35/ CIT(A)-XVI/Kol/12-13 dated 11.12.2013. Assessment was framed by ITO, Ward-29(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2009-10 vide his order dated 25.10.2011. Penalty was imposed by JCIT, Range-29, Kolkata u/s. 271E of the Act vide his order dated 19.02.2013.

2. Brief facts of the case are that one Shri Tarun Chakraborty is the proprietor of M/s. Chakraborty Enterprises, who is the husband of the assessee and Confidential Assistant of a Central Minister at the relevant period. In discharge of his duties he was travelling all over India and for running his business smoothly he used to keep some money with his wife to give it to the concern as and when need arises. According to the assessee, she was giving the amounts to M/s. Chakraborty Enterprises whenever they require. According to her, it is purely a family arrangement and has been a practice quite for a long time. However, while processing the return of income of the assessee for AY 2009-10 it was noticed that during the relevant previous year a sum of Rs.6,79,000/- was paid by the assessee to Chakraborty Enterprises by cash and i.e. in violation of provisions of section 269T of the Act. As such, u/s. 271E of the Act the JCIT levied penalty at 100% i.e. Rs.6,79,000/- by his order dated 19.02.2013. Aggrieved by such an order, assessee preferred appeal before the Ld. CIT(A), who dismissed the appeal of assessee confirming the penalty. Challenging the said order, the assessee is in appeal before us on the following grounds:

*“1.For that the Ld. CIT(A) erred both in law and in fact by confirming the penalty of Rs.6,79,000/- u/s. 271E of the I. T. Act, 1961 without considering and appreciating the fact of the case.*

*2. For that the Ld. CIT(A) erred both in law and in fact by not considering the judicial pronouncement in this matter pronounced by the several High Courts & apex Court of the country.*

*3. For that the order passed by the Ld. CIT(A) is illegal, arbitrary, void ab initio and without any sanction of law.”*

3. It is the argument of the Ld. AR that it is only due to the mistake of the Accountant such amounts were shown as loans but, as a matter of fact, it was only a family arrangement. He further submitted that the disclosure of the amount was contained in the compilation of accounts and the explanation offered by the assessee constitutes reasonable cause u/s. 273B of the Act, as such, imposition of penalty is not justified. He further submitted that since there is no tax effect, a liberal construction of the provisions is to be made. For this reason, he prayed to allow the appeal and quash the orders of the authorities below.

4. It is the argument of the Ld. DR that in this matter the accounts of the assessee itself clearly show that the amounts were taken by the assessee as loan and the repayment thereof in cash are in violation of provisions of section 269T of the Act attracting the penal provision of section 271E of the Act and since the Income Tax Act makes no difference basing on any relationship the JCIT is justified in imposing the penalty and the Ld. CIT(A) is justified in confirming the same. For this reason he prayed to dismiss the appeal.

5. We have heard rival submissions and gone through facts and circumstances of the case. We find that there is no dispute that the assessee is the wife of one Shri Tarun Chakraborty, who is the proprietor of M/s. Chakraborty Enterprises. There is also no dispute that the assessee gave the amounts in cash to M/s Chakraborty Enterprises only. However, since it was shown by the assessee in Balance Sheet as loan and advance in the liability side, the JCIT concluded that it is only repayment of loan in the form of cash attracting the penal provisions u/s. 269T r.w.s. 271E of the Act. Both the authorities below rejected the plea of the assessee that it is only a family arrangement and not otherwise. When the plea of family arrangement is taken, the transactions were between the wife and husband, and more particularly in the light of the fact that these payments were shown in the accounts of the assessee, it does not appear to be a matter to brush aside the plea of the assessee that the Accountant committed a mistake in treating the payments as repayment of loans. Should there be any mala fide intention, perhaps the assessee would not have shown

these figures in the accounts itself. It was open for the AO and for that matter the JCIT to verify the contention of the assessee that a similar practice has been in vogue quite for sometime in the previous years. Further, it has been the contention of the assessee before the AO and the Ld. CIT(A) that in the case of Tarun Chakraborty and Smt. Sarbani Chakraborty in the earlier years the Ld. CIT(A) accepted this fact. It is a verifiable fact. However, there is no comment on this aspect by either the JCIT or the Ld. CIT(A). Rule of consistency as laid down by the Hon'ble Kerala High Court in the case of CIT Vs. N.P.Mathew 280 ITR 44 (Ker) demands that a consistent view has to be taken in respect of the same assessee for different years.

6. The Ld. AR placed reliance on a decision of Hon'ble Apex court in the case of CIT Vs. Jai Laxmi Rice Mills Ambala City reported in (2015) 379 ITR 521 (SC) for the principle that without recording of any satisfaction no penalty could be levied though the AO wanted penalty proceedings to be initiated u/s. 271(1)(c) of the Act. A coordinate Bench of this Tribunal in the case of Vinod Kr. Agarwal Vs. JCIT in ITA No. 237 and 238/Kol/2013 dated 04.02.2016 while following the above decision of Hon'ble Apex Court deleted the impugned penalty levied u/s. 271D and 271E of the Act.

7. On merits also, Ld. AR placed reliance on a decision in the case of CIT Vs. Sunil Kumar Goel (2009) 315 ITR 0163 (P&H) for the principle that a family transaction between the two independent assessee based on an act of casualness especially in a case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, establishes 'reasonable cause' u/s. 273B of the Act for not invoking the penal provisions of ss. 271D and 271E of the Act. Basing on this judgment, Ld. AR submits that in this matter the husband entrusted some amounts to the wife to be used for his business in his absence as such, such an act of casualness does not give rise to any commercial relations between the wife and the husband. He further submitted that all these facts are disclosed in the accounts of the assessee but it is only due to the mistake of the Accountant such amounts were treated as loans and advances but, as a matter of fact, it is only pursuant to a family arrangement the wife dealt with the money of the husband in his absence only for his business purposes.

8. Considering the facts and circumstances as a whole, an element of truth cannot be ruled out in the contention of the assessee. The assessee and her husband are independent assessee and dealing with the money of husband for the purpose of business in his absence

is not an uncommon thing. Further, when it was pleaded before the authorities below it was open for them to verify the truth or otherwise of this fact with reference to the earlier year's assessments. Further, the revenue does not plead any tax effect in this matter except the penalty. We are therefore, inclined to believe the contention of the assessee that casualness of the acts between the wife and husband in dealing with the money of the husband for his business purposes in his absence constitutes a reasonable cause u/s. 273B of the Act. Even otherwise the assessment order reads that penalty proceedings u/s. 271(1)(c) of the Act were initiated but there is no whisper as to the satisfaction to initiate the proceedings u/s. 271E of the Act. In view of the binding precedent of the judgment of the Hon'ble Apex Court in the case of Jai Laxmi Rice Mills Ambala City, supra followed by a coordinate bench of this Tribunal in the case of Vinod Kr. Agarwal, supra by respectfully following the same, we reach a conclusion that the penalty proceedings without being preceded by record of reasons or satisfaction are bad in law and any addition based on such proceedings is liable to be deleted. Therefore, either in law or on fact the orders of the authorities below cannot be sustained, as such, while answering the grounds in favour of the assessee we direct the deletion of the penalty levied u/s. 271E of the Act.

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

Order is pronounced in the open court on 21.10.2016.

Sd/-

(Waseem Ahmed)  
Accountant Member

Sd/-

(K. Narasimha Chary)  
Judicial Member

Dated : 21st October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Smt. Sarbani Chakraborty, Flat No. 30B, tower-1, south City, 375, Prince Anwar Shah Road, Kolkata-700 068.
- 2 Respondent –JCIT, Range-29, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.