

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.782/Bang/2017
Assessment year : 2009-10

Shri Sanmathi Ambanna, Prop: M/s. Mahadevi Transport, Railway Station Road, Challakere, Chitradurga – 577 522. PAN : AGJPA 3024 B	Vs.	The Joint Commissioner of Income-tax, Davanagere Range, Davanagere.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Pranav Krishna, Advocate
Revenue by	:	Shri. Vikas K. Suryavamshi, Addl. CIT

Date of hearing	:	17.12.2018
Date of Pronouncement	:	.12.2018

ORDER

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of CIT(A), Davangere dated 08.12.2016, confirming the levy of penalty u/s 271D of the Income Tax Act, 1961 (in short ‘the Act’) for Assessment Year 2008-09.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, an individual, engaged in business as a transporter, operating passenger buses in the name and style of M/s. Mahadevi Transport, filed his return of

income for Assessment Year 2009-10 on 30.09.2009 declaring total income of Rs.2,45,350/-. In the course of assessment proceedings, the Assessing Officer ('AO') noticed that the assessee had taken cash loans of Rs.3,20,000/- from his father-in-law on various dates in the year under consideration in contravention of the provisions of section 269SS of the Act.

2.2 As per the provisions of section 269SS of the Act, no person shall accept loan above Rs.20,000/- in cash. Under section 271D of the Act, any person who takes or accepts any loan or deposit in contravention of the provisions of section 269SS, shall be liable to pay by way of penalty, a sum equal to the amount of loan or deposit so taken. Since the cash loan taken in the case on hand was accepted beyond the limit of Rs.20,000/- as laid down in section 269SS of the Act, the AO initiated penalty proceedings from imposing penalty proceedings u/s 271D of the Act. As per the provisions of section 273 B of the Act, no penalty u/s 271D of the Act shall be levied if the assessee is able to establish reasonable cause for failure to comply with the provisions of section 269SS of the Act.

2.3 In penalty proceedings, the assessee, *inter alia*, submitted that the transactions in question cannot be strictly construed as loan but rather are in the nature of gifts from his father-in-law Shri. G. P. Padmakumar because of the fact that the person giving the money and the person accepting the money were close relatives; being members of the same family. Apart from this, it was also submitted that the transactions were genuine, were entered into due to the urgent exigencies of business and that the assessee was under the bonafide belief that there was no breach of any provision of law. The assessee's above contentions/explanations did not find favour with the AO i.e., JCIT who proceeded to levy penalty of Rs.3,20,000/- u/s 271D of the Act vide order dated 21.02.2013; being an amount equivalent to the loan accepted in cash in violation of the provisions of section 269SS of the Act. On appeal, the CIT(A), Davangere, vide the impugned order dated 08.12.2016 dismissed the

assessee's appeal ex-parte for non-prosecution following, *inter alia*, the decision of the Delhi Bench of ITAT in the case of Multiplan (India) Ltd., 38 ITD 320 (Del).

3.1 Aggrieved by the order of CIT(A), Davangere dated 08.12.2016, upholding the levy of penalty of Rs.3,20,000/- by the JCIT, Davangere u/s 271D of the Act for Assessment Year 2009-10, the assessee has preferred this appeal before the Tribunal, wherein he has raised the following grounds:

1. *The order of the Authorities below in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
2. *The appellant denies himself liable to the penalty levied by the learned Joint Commissioner of Income - Tax and confirmed by the learned Commissioner of Income-tax (Appeals), under section 271D of the Act amounting to Rs. 3,20,000/- under the facts and circumstances of the case.*
3. *The levy of penalty u/s. 271D of the Act is bad in law as much as the Appellant has not committed any default actionable u/s. 269SS of the Act and consequently, the impugned order passed deserves to be cancelled.*
4. *The learned Commissioner of Income-tax (Appeals) failed to appreciate that order of penalty passed by the learned Joint Commissioner without fulfilling the mandatory conditions for invoking the provisions of section 271D of the Act is bad in law on the facts and circumstances of the case.*
5. *Without Prejudice to the above, the learned Joint Commissioner ought to appreciate that the Appellant was prevented by reasonable cause and that there was no animus to defy the statutory provisions of the Act and therefore, ought not to have imposed the penalty.*
6. *The Commissioner of Income Tax (Appeals) failed to appreciate that the imposition of penalty under section 271D of the Act is not automatic and the teamed assessing officer ought to have considered the explanations filed by the appellant as reasonable and ought to have deleted the penalty levied, by considering the provisions of section 273B of the Act under the facts and circumstances of the case.*

7. *The tower authorities failed to appreciate that the impugned cash was not received by the appellant and was paid by the close relative of the Appellant for meeting Appellant's business exigencies and that provisions of Section 271D are not applicable on the facts and circumstances of the case*
8. *Without prejudice to the above, the penalty levied is highly excessive and to be reduced substantially.*
9. *The Appellant craves leave to add, alter, modify, delete or substitute any of the grounds urged above.*
10. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.*

3.2 The learned AR for the assessee was heard in support of the grounds raised seeking deletion of the penalty of Rs.3,20,000/- levied u/s 271D of the Act by the AO for violation of the provisions of section 269SS of the Act in the period relevant to Assessment Year 2009-10. According to the learned AR, the cash loans in question were taken by the assessee from his father-in-law Shri. G. P. Padmakumar, a close relative. In this regard, it was contended that the transactions of loan between close relatives does not attract the provisions of section 269SS of the Act; and in support of this proposition, *inter alia*, placed reliance on the following judicial pronouncements:

- (i) Dr. B. G. Panda Vs. DCIT (2000) 111 Taxman 86 (Cal) (MAG);
- (ii) Smt. Deepika Vs. Addl. CIT in ITA No.561/Bang/2017 dated 13.10.2017;
- (iii) Shri R. Gopala Iyer Vs. Addl. CIT in ITA No. 334/Bang/2007 dated 22.06.2007.

3.3 Per contra, the learned DR for Revenue relied on the orders of the JCIT in levying the aforesaid penalty u/s 271D of the Act.

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. We find that the issue of levy of penalty u/s 271D of the Act in similar factual circumstances was considered by a co-ordinate bench of this Tribunal in the case of Smt. Deepika Vs. Addl. CIT in ITA No. 561/Bang/2017 dated 13.10.2017 and in our considered view the decision therein is squarely applicable to the facts and circumstances of the assessee in the case on hand. In the aforesaid decision of the Co-ordinate Bench of this Tribunal in the case of Smt. Deepika (supra), following the decision of the ITAT, Kolkata in the case of Dr. B. G. Panda (2000) 111 Taxman 86 (Cal) and other judicial pronouncements referred to therein held as under at paras 7 to 14 thereof:

“7. We have considered the rival submissions. The facts as decided by ITAT Kolkata in the case of Dr.B.G.Panda were that loan transactions were carried out in cash in violation of the provisions of Sec.269SS of the Act between husband and wife. On the question of levy of penalty u/s.271D of the Act, the Tribunal held as follows :-

"Section 269SS is applicable to the deposits or loan. It is true that both in the case of a loan and in the case of a deposit, there is a relationship of debtor or creditor between the party giving money and the party receiving money. In the case of deposit. the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposits the money and the benefit normally being the earning of interest from the party who customarily accepts deposit. In the case of loan it is the borrower at whose instance and for whose needs the money is advanced. The borrowing is primarily for the benefit of a borrower although the person who lends the money may also stand to gain thereby earning interest on the money lent. In the instant case, this condition was not applicable because there was no relationship of the depositor or a creditor as no interest was involved. This was neither a loan nor a deposit. At the same time. the words 'any other person' are obviously a reference to the depositor as per the intention of the Legislature. The communication/transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Otherwise, there would be a powerful tendency to disturb the peace of families. to promote domestic broils, and to weaken or to destroy the feeling of mutual confidence which is the most enduring solace of married life.

In the instant case, the wife gave money to husband for construction of a house which was naturally a joint venture for the property of the family

only. This transaction was not for commercial use. The amount directly received by the husband. i.e .. the assessee. was to the extent of Rs. 17.000 only and the balance amount of Rs. 26.000 was given by payment directly to the supplier of the material required for the construction of the house. Though the expenditure was apparently incurred by the husband being the karta/head of the family, it could not be said that the wife could not have any interest of her own in this house being constructed. The transaction was neither loan nor any gift as no 'interest' element was involved and there was no promise to return the amount with or without interest. It was clear that the money given by the wife was a joint venture of the family. Taking into consideration overall facts and circumstances of the case, it could be said that the aforesaid piece of legislation was not applicable in the instant case. By taking the liberal view and applying the golden rule of interpretation, the assessee had a reasonable cause within the meaning of section 27 3B. Therefore. the penalty should be deleted.

8. In the case of ACIT Vs. Vardaan Fashion (2015) 60 Taxmann.com 407 (Delhi-Trib.) it was held that where the Assessee intended to purchase a property jointly for which assessee's wife had advanced a sum of money to assessee and when deal for purchase of such house property did not materialize, assessee refunded said amount through cheque to his wife. On the question whether acceptance of cash by husband from his wife would amount to taking of loan or advance in strict sense of section 269SS , the tribunal held that it cannot be construed as loan attracting provisions of Sec.269SS of the Act and therefore no penalty under section 271D could be levied.

9. The Income-tax Appellate Tribunal, Amritsar Bench, in the case of ITO v. Tarlochan Singh [2003] 128 Taxman 20 (Mag) was concerned with a case where the husband had taken the cash of Rs. 70,000 from his wife for the purpose of investment in the acquisition of immovable property. The Assessing Officer had levied the penalty under section 271D which was cancelled by the Income-tax Appellate Tribunal holding as under :

"Even keeping in view the contents of the Departmental Circular No. 387 [1985] 152 ITR (St.) 1), it was never the intention of the Legislature to punish a party involved in a genuine transaction. Therefore, by taking a liberal view in the instant case, the assessee had a reasonable cause within the meaning of section 273D. Thus, keeping in view the entire facts of the instant case, and also keeping in view the intention of the Legislature in enacting the provisions of section 269SS, it was to be held that the assessee was prevented by sufficient cause from receiving the money by an account payee cheque or account payee bank draft. In the instant case, the assessee was of the opinion that the amount in question did not require to be received by an account payee cheque or account payee draft. Thus, there was a reasonable cause and no penalty should have been levied.

From the above, it would be clear that the assessee had taken plea that firstly there was no violation of the provisions of section 269SS. Secondly, there was a reasonable cause. Thirdly, the assessee was under the bona fide belief that he was not required to receive the amount otherwise than by an account payee cheque or account payee draft. As an alternative submission, it was contended that the default could be considered either technical or venial breach of the provisions of law and, therefore, no penalty under section 271D was leviable.

In view of the above discussion, no penalty under section 271D was leviable. It is well-settled that penalty provision should be interpreted as it stands and, in case of doubt, in a manner favourable to the taxpayer. If the court finds that the language is ambiguous or capable of more meaning than the one, then the court has to adopt the provision which favours the assessee, more particularly where the provisions relate to the imposition of penalty.

In view of the above, the penalty sustained by the Commissioner (Appeals) was cancelled."

10. The ratio of the above decision of the Income-tax Appellate Tribunal, Amritsar Bench, would be squarely applicable to the facts of the assessee's case. Here also, the daughter and member of the HUF have given money for certain specific purpose. The source and genuineness of the loan has been accepted by the AO. The cash loans in question therefore cannot be said fall within the mischief of Sec.269SS of the Act as near relatives cannot be "Other person" within the meaning of Sec.269SS of the Act. In any event in the circumstances of the case, there was reasonable cause for accepting loans in cash.

11. In the case of CIT v. Sunil Kumar Goel [2009] 315 ITR 163/183 Taxman 53 , the Hon'ble Punjab and Haryana High Court held as under :

"A family transaction, between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273B of the Act. Since the assessee had satisfactorily established 'reasonable cause' under section 273B of the Act, he must be deemed to have established sufficient cause for not invoking the penal provisions of sections 271D and 271E of the Act against him. The deletion of penalty by the Tribunal was valid."

12. That the ratio of the above decision of the hon'ble Punjab and Haryana High Court would also be squarely applicable in respect of cash transaction between the assessee and his near relatives.

13. In the case of M.Yeshodha 351 ITR 265(Mad), the Hon'ble Madras High Court held that transaction of loan between father in law and daughter in law in cash cannot be subject matter of levy of penalty u/s.271D of the Act.

14. In the light of the aforesaid judicial pronouncements, we are of the view that imposition of penalty u/s.271D of the Act cannot be sustained. The same is directed to be deleted. The appeal of the Assessee is allowed.”

3.4.2 Respectfully following the decision of the co-ordinate bench of this Tribunal in the case of Smt. Deepika Vs. Addl. CIT in ITA No.561/Bang/2017 and other judicial pronouncements cited therein; including that of the Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Sunil Kumar (2009) 315 ITR 163 (P&H); wherein it was held that cash loans from close relatives cannot be said to fall within the mischief of section 269SS of the Act, as near/close relatives cannot be said to be “other persons” within the meaning of section 269SS of the Act, we are of the considered view that the imposition of penalty u/s 271D of the Act in the case on hand is unsustainable and accordingly direct that the same be deleted. Consequently, grounds raised by the assessee in this regard are allowed.

4. In the result, the assessee's appeal for assessment year 2009-10 is allowed.

Order pronounced in the open court on this 2nd day of January, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 2nd January, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.