

IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, Kolkata
(Bench – “C”)

BEFORE SHRI ABY. T. VARKEY, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

I.T.A. No.1531/Kol/2014
(Assessment year 2008-09)

Ashok Kumar Bagaria [PAN :ADAPB9497P]	-Vs-	JCIT, Range-1, Asansol
(Appellant)	..	(Respondent)

For the Appellant	None
For the Respondent	Shri Sankar Halder, CIT, Sr. DR.
Date of Hearing	02.04.2019
Date of Pronouncement	05.04.2019

ORDER

Per M. Balaganesh:

This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Asansol [in short Id. CIT(A)] in Appeal No.36/CIT(A)/Asl/R-1/Asl/11-12 dated 29.04.2014 against the penalty order of JCIT, Range-1, Asansol [in short the Id AO] u/s 271D of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) on 27.05.2011 for the Assessment Year 2008-09.

2. The only issue to be decided is as to whether the Id. CIT(A) was justified in upholding the levy of penalty u/s 271D of the Act in the sum of Rs.2,00,000/- in the facts and circumstances of the case.

3. At the outset, we find that none appeared on behalf of the assessee nor any adjournment petition was filed on behalf of the assessee. The notice of hearing was duly served on the assessee on the earlier occasions. The assessee was duly represented by one authorized representative earlier who had also filed an adjournment letter dated 20.11.2018. Hence, we proceed to dispose off this appeal after hearing the ld. DR.

4. The brief facts of this issue are that the assessee received loan of Rs.2,00,000/- from his father in cash. The proceedings u/s 271D of the Act was initiated for the same and penalty u/s 271D was levied in the sum of Rs.2,00,000/- by JCIT, Range-1, Asansol. The assessee explained that the father had closed down his business and the cash available with his father was used by the assessee as he was in urgent need of money. The ld. A.O however observed that the father had bank account on his own and the said payment could have very well been made by account payee cheque or account payee draft to the assessee. With these observations, he levied penalty of Rs.2,00,000/- u/s 271D of the Act. Before the ld. CIT(A), the assessee did not make any appearance and merely filed written submissions. Before the ld. CIT(A), the assessee has stated that he had to make certain payment to M/s Vishal Paper Mills (P) Ltd. as investment and that his father was seriously ill and was not in a position to sign the cheque. Since the father, on closing down of his business, had sufficient cash of his own which was left at the custody of the son for safety purposes, the said cash was utilized by the assessee to meet his urgent business commitment. The ld. CIT(A) however did not appreciate the contentions of the assessee and upheld the levy of penalty. Aggrieved the assessee is in appeal before us.

5. We have heard ld. DR. We find from the facts narrated above that assessee had given reasonable cause for availing loan in cash from his father within the meaning of section 271D of the Act. Hence, the assessee would be out of the rigours of the levy of penalty u/s 271D of the Act. We also find that the assessee

had placed reliance on the decision of the Hon'ble Madras High Court in the case of *CIT vs. Smt. M. Yasoda in Appeal No.320 of 2010* dated 05.02.2013 wherein the loan received by that assessee from her father-in-law was subjected to levy of penalty under section 271D of the Act and the Hon'ble High Court ordered cancellation of penalty thereon. In view of the aforesaid facts and respectfully following the judicial precedent relied upon hereinabove, we direct the Id. A.O to cancel the penalty u/s 271D of the Act in the facts and circumstances of the case. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 05.04.2019.

Sd/-
[A. T. Varkey]
Judicial Member

Sd/-
[M. Balaganesh]
Accountant Member

Dated : 05.04.2019
[RS, Sr.PS]

Copy of the order forwarded to:

1. Appellant –Ashok Kr. Bagaria, Mookim Niwas, C/o. R.K. Mookim, 21, G.T. Road, Lower Chilidanga, Asansol-713304.
2. Revenue – JCIT, Range-1, Asansol.
3. CIT(A)- Kolkata.
4. CIT – , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Assistant Registrar, Kolkata.