

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.723/Del/2017

निर्धारणवर्ष/Assessment Year: 2011-12

Sarita Singh H.No. 8, Prem Nagar, Near Sector-2, Bahadurgarh, Jhajjar.	बनाम Vs.	Addl. CIT Range Rohtak, Aaykar Bhawan, Opposite Mansarovar Park, Rohtak.
PAN No. AZXPS2543L		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. R.S. Singhvi, CA Sh. Satyajit Goel, CA
राजस्वकीओरसे /Revenue by	Sh. Prakash Dubey, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	09.03.2021
उद्घोषणाकीतारीख/Pronouncement on	10.03.2021

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals), Rohtak dated 14.12.2016 for AY 2011-12, challenging the levy of penalty u/s 271D of the I.T. Act.

2. We have heard Ld. Representatives of both the parties and perused the material on record.

3. The assessee filed return of income declaring income of Rs. 2,30,000/- plus agricultural income of Rs. 1,10,000/- was filed on

31.03.2012. The assessee is a Civil Contractor. The AO made addition of Rs. 42,587/- on account of low household withdrawn. The AO also made addition of Rs. 1,10,000/- on account of undisclosed agricultural income. The assessment was completed u/s 143(3) dated 21.03.2014. The AO imposed penalty u/s 271D of the I.T. Act vide order dated 28.04.2015/01.05.2015. The AO in this order has mentioned that assessee has received cash amount of Rs. 1,74,320/- and Rs. 35,90,165/- from Ms. Sujata and Shri Dushyant other than account payee cheque/draft in contravention of provisions of section 269SS of the Act. The assessee in response to show-cause notice filed a reply which was not accepted by AO, hence, penalty u/s 271D of the Act was imposed. The Ld. CIT(A) dismissed the appeal of assessee.

4. Ld. Counsel for assessee submitted that assessee has maintained account with IDBI Bank, Bahadurgarh. Ms. Sujata and Shri Dushyant are the neighbours of the assessee and known to assessee for many years. They have no bank account and have purchased property and they have to make payment to HUDA for development charges which could be made only through demand draft and requested to help them. They have given cash to the assessee through which drafts were prepared in their names for payment to be made to HUDA for development charges. The assessee did this act on humanitarian ground to help them out. Copy of the bank statement in the name of the above persons along with bank account of the assessee are filed the receipt in the name of Sh. Dushyant is also filed issued by HUDA of the same amount.

5. Ld. Counsel for assessee therefore submitted that due to the above reasonable cause assessee received cash from these two persons. Therefore, no penalty is leviable. He has relied upon the order of the ITAT Jaipur Bench in the case of Sunil Kumar Vs. Addl. CIT in ITA No. 203 & 204 (JP)/2018 dated 09.01.2019 in which amount was received for making demand draft in favour of Excise Department for participating in

the tender of liquor shop. In such circumstances, it was held that assessee has a reasonable explanation, therefore, penalty was cancelled.

6. On the other hand, Ld. DR relied upon the orders of the authorities below.

7. We have considered the rival submissions. Section 273B of the I.T. Act provides that no penalty shall be imposable on the persons or the assessee as the case may be for any failure referred to in section 271D of the I.T. Act, if he proves that there was a reasonable cause for the said failure. The assessee explained before the authorities below that two of the neighbours of the assessee purchased the properties and they were to make payment to HUDA. Since there was having no bank account, therefore, on their request assessee received the amount and deposited in his bank account. The drafts were prepared favouring the HUDA and ultimately the same have been deposited by them. The receipts are in the names of Mrs. Sujata and Shri Dushyant of the equivalent amount. The receipts of HUDA in favour of Shri Dushyant are also placed on record. These facts would clearly disclose that assessee has reasonable cause for failure to comply with provisions of law contained u/s 271D of the I.T. Act. Further, while passing the assessment order dated 21.03.2014 the AO did not disbelieve the explanation of the assessee as regards receipt of cash from these two neighbours and issue of drafts for these two neighbours and ultimate payment to HUDA. The AO did not record any satisfaction in the assessment order for contravention of provisions of section 271D of the I.T. Act. The Hon'ble Supreme Court in the case of CIT Vs. Jai Laxmi Rice Mills 379 ITR 521 held as under:

“For the AY 1992-93, the assessment order was passed on the assessee on February 26, 1996, ex parte. While framing the assessment, the Assessing Officer observed that the assessee had contravened the provisions of section 269SS of the Income-tax Act, 1961, and because of this the Assessing Officer was satisfied that penalty proceedings u/s 271D of the Act were to be initiated. On appeal, the Commissioner (Appeals) by order

dated December 5, 1996, set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity to the assessee. Meanwhile penalty under section 271D was levied by order dated September 23, 1996, i.e., before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. After remand, the AO passed a fresh assessment order but in this assessment order, no satisfaction regarding initiation of penalty proceedings u/s 271D of the Act was recorded. The Tribunal as well as the High Court held that the penalty order passed on the basis of the original assessment order could not still survive when that assessment order had been set aside because the satisfaction recorded therein for the purpose of initiation of the penalty proceedings would also not survive. On further appeals:

Held, dismissing the appeals, that in the fresh assessment order there was no satisfaction recorded regarding penalty proceedings under section 271D of the Act though in that order the Assessing Officer wanted penalty proceedings to be initiated u/s 271(1)(c) of the Act. Thus, the penalty u/s 271D was without any satisfaction and, therefore, no such penalty could be levied.”

8. Considering the above, in the light of the judgment of Supreme Court above, it is clear that assessee has reasonable cause for failure to comply with provisions of law and that no satisfaction has been recorded by the AO in the assessment order, would clearly show that no penalty is leviable in the matter.

9. In view of the above, we set aside the orders of the authorities below and cancel the penalty u/s 271D of the I.T. Act.

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

Order pronounced in the open court on 10/03/2021

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 10.03.2021

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi