

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. Nos. 338 & 339/Ahd/2023
(Assessment Years: 2013-14 & 2016-17)

Vijayaben G. Zalavadia Plot No. 1289/2, Sector-4C, Gandhinagar-382006	Vs.	JCIT, Gandhinagar Range, Gandhinagar
[PAN No.AABPZ3046L]		
(Appellant)	..	(Respondent)

Appellant by :	Shri R. B. Patel, A.R.
Respondent by :	Shri Ashesh R Rewar, Sr. D.R.

Date of Hearing	11.07.2023
Date of Pronouncement	14.07.2023

ORDER

Both appeals filed by the same assessee are against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi on 26.04.2023 & 27.03.2023 for A.Ys. 2013-14 & 2016-17.

2. As all the grounds of appeal are identical in both the appeals except the figure so we are only raised the grounds of ITA No. 338/Ahd/2023 for A.Y. 2013-14 as under:

- “1. The order passed by Ld. CIT(A) is against law, equity and natural.
2. The Ld. CIT(A) has erred in law and on facts in upholding the penalty levied U/S 271D by Ld. JCIT Gandhinagar of Rs. 1,70,000/-
3. The Ld. CIT(A) has erred in law and on facts confirming impugned penalty initiated and levied in the absence of regular assessment.
4. The Ld. CIT(A) has erred in law and on facts in confirming and levying penalty in contravention of Section 269SS ignoring the fact that payments were through banking channel.

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5. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”*

3. The assessee is agriculturist and having agricultural income in the form of salary. The Assessing Officer on receipt of information from DDIT (Investigation) observed that assessee has accepted loan of Rs. 1,70,000/- during the relevant period from The Berna Gamni Seva Sahkari Mandali Ltd. The Assessing Officer based on the said information issue show-cause notice dated 13.05.2019 for levy of penalty under Section 271D for contravention of Section 269SS of the Act. The assessee filed reply dated 20.05.2019 thereby stating that acceptance of loan of Rs. 1,70,000/- from the society was through banking channel only and not in cash. The assessee further submitted the bank statement wherein transaction of taking the said loan was demonstrated before the Assessing Officer. The assessee has given the certificate issued by The Berna Gamni Seva Sahkari Mandali Ltd. as well as the ledger from The Berna Gamni Seva Sahkari Mandali Ltd.

4. The Assessing Officer issued notice under Section 274 for imposition of penalty proceedings under Section 271D. The assessee filed without. After taking cognizance of the reply the Assessing Officer impose penalty under Section 271D amounting to Rs. 1,70,000/- for acceptance of cash loan in contravention of provision of Section 269SS of the Act.

5. Being aggrieved by the said penalty order the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

6. The Ld. A.R. submitted that since the assessee is an agriculturist there was no regular assessment done by the authorities. Therefore, the question of contravention of Section 269SS of the Act does not sustain. The Ld. A.R. further submitted that all the documentary evidence that the said loan was taken through banking channel and the respective certificates of the Sahkari Mandali Ltd. was presented before the Assessing Officer alongwith banking statement and ledger account of The Berna Gamni Seva Sahkari Mandali Ltd. Thus, the Ld. A.R. submitted that penalty levied under Section 271D be deleted.

7. The Ld. D.R. relied upon the penalty order and the order of the CIT(A) and further submitted that assessee did not substantiated the loan from the balance that the said loan was not in cash. Thus, the Ld. D.R. submitted that the documents presented before the Tribunal should be verified. The Ld. D.R. submitted that the matter may be remanded back to the file of the Ld. CIT(A).

8. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that there was no regular assessment done in assessee's case as the assessee is an agriculturist. Further, the Assessing Officer as well as the CIT(A) has not doubted the bank statement of the assessee wherein the amount of Rs. 2,30,000/- which was transferred from The Berna Gamni Seva Sahkari Mandali Ltd. was shown dated 24.05.2012. The transactions as well as the ledger alongwith the certificate issued by The Berna Gamni Seva Sahkari Mandali Ltd. was not doubted by the revenue authorities. Thus, the loan

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was accepted through banking channel and there was no cash involved in the present transactions. Therefore, Section 269SS does not attract. Thus, the penalty levied under Section 271D does not sustain. The Ld. CIT(A) as well as the Assessing Officer was not justified in levying the penalty under Section 271D of the Act. Hence, the appeal of the assessee being ITA No. 228/Ahd/2023 is allowed.

9. As relates to ITA No. 339/Ahd/2023 for A.Y. 2016-17 the issue involved therein is also identical and therefore, the findings given hereinabove for A.Y. 2013-14 are applicable in these year as well. Hence, appeal for A.Y. 2016-17 is also allowed.

10. In result, both the appeals are allowed.

This Order pronounced in Open Court on

14/07/2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 14/07/2023

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad