

**आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**'SMC' BENCH, AHMEDABAD**  
**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**MS MADHUMITA ROY, JUDICIAL MEMBER**  
आयकर अपील सं./ITA No.2996/AHD/2016  
अाधरण वष/Asstt. Year: 2008-2009

Hareshkumar Becharbhai Patel 57/58, Triupati Market, Near BagvadaDarwaja, Patan.  PAN: ALNPP0915F	Vs.	JCIT, Tax, Patan.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Pritesh Shah, A.R
Revenue by :	Shri Jayant Jhavari, Sr.DR

सुनवाई का ताराख/Date of Hearing : 13/12/2018  
घोषणा का ताराख /Date of Pronouncement: 01/01/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals), Gandhinagar[CIT(A) in short] vide appeal no.CIT(A)/GNR/266/2015-16, dated 12/09/2016 arising in the matter of assessment order passed under s.143(3)of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 16/09/2015relevant toAssessment Year (AY) 2008-09.

2. The only issue raised by the assessee is that Ld. CIT (A) erred in confirming the penalty u/s 271D of the Income Tax Act, 1961, amounting to Rs. 2,54,000/-

3. Briefly stated facts are that the assessee is an individual and engaged in the business of Share Trading. The assessee during the year has received a sum of Rs. 2,54,000/- in cash on different dates from his father. The assessee claimed that Rs. 2,54,000/- received from his father in cash is representing the gift. The assessee in support of his claim filed a Gift Deed prepared on the Stamp Paper of Rs. 50 dated 17-5-2011.

4. However, the AO observed that the gift was received by the assessee in the Financial Year 2007-08 whereas the Gift Deed was prepared on the Stamp Paper purchased on 16/05/2011. As such the Gift Deed was made on 17/05/2011. Accordingly the AO was of the view that the cash received from the father representing the unsecured loan which was accepted by the assessee in contravention to the provision of section 299SS of the Act. Accordingly the AO in the Assessment Order proposed to levy the penalty u/s 271D of the Act for the violation of the provision of section 269SS of the Act.

4.1 In view of the above the AO initiated the penalty proceedings u/s 271D of the Act, vide show cause notice dated 29/05/2015. The assessee in compliance to such notice stated that the amount received from his father is in the nature of the gift. Thus, the same cannot be treated as an unsecured loan. The assessee also claimed that he had shown money received from his father as a gift in the books of accounts.

4.2 However, the AO during the penalty proceedings observed certain facts as detailed under:

- i) In the cash book furnished by the assessee, there was no mention that the assessee has received a gift from this father.

- ii) The gift was received in the previous year 2007-08, but the Gift Deed was done on 17/05/2011. The Gift Deed was also not notarized.
- iii) There was no evidence filed by the assessee about the availability of cash in hand with his father within one month before the date of the final transaction.
- iv) The assessee received the gift on different dates in piecemeals.

4.3 In view of the above the AO held that the cash received by the assessee from his father does not represent the gift as claimed by him. Therefore, the AO held the assessee had received an unsecured loan from his father in contravention to the provisions of section 269SS of the Act. Accordingly the AO levied the penalty of Rs. 2,54,000/- under the provision of section 271D of the Act.

5. Aggrieved assessee preferred an appeal to Ld. CIT (A). The assessee before the Ld. CIT (A) submitted that the Gift Deed was not prepared at the time of taking the gift because assessee was not aware of the taxation provision. The Gift Deed was prepared when it was felt necessary. Therefore Gift Deed was prepared on 17/05/2011.

5.1 Transaction between the assessee and the father was a genuine transaction, and therefore the penalty cannot be levied merely on the ground that there was a delay in the preparation of the Gift Deed.

5.2 The transaction of receiving the cash from the father was within the family. The AO did not doubt this fact during the penalty proceedings. Therefore the penalty provision u/s 271D of the Act cannot be attracted to the transaction made among the family members.

5.3 The assessee in support of his claim relied on the various case laws as recorded in the order of the Ld. CIT (A).

5.4 However, the Ld. CIT (A) disregarded the contention of the assessee, observed that the Gift Deed was prepared after a gap of 4 ½ years which was nothing but an excuse afterthought.

5.5 There was no evidence filed by the assessee suggesting the availability of cash in hand of his father at the time of the gift.

5.6 The assessee has not justified that he received the cash due to unavoidable reason as specified u/s 273B of the Act.

6. Being aggrieved by the order of the Ld. CIT (A) assessee is in appeal before us.

6.1 The Ld. AR before us filed a paper book running from pages 1 to 172 and submitted that the assessee was not aware that he needs to prepare a Gift Deed in support of the cash received from his father. The Gift Deed was prepared when it was felt necessary. Accordingly, it was prepared on 27/05/2011, during the assessment proceedings and its contents cannot be brushed aside merely on the ground that it was not prepared during the relevant time. The Ld. AR drew our attention on page 42 to 43 of the paper book where the Gift Deed was placed.

6.2 The gift received from the father was shown as a liability in the financial statement. But the character of the transaction cannot be changed on the classification of the same under the head liability in the balance sheet.

6.3 The Ld. AR, further submitted that the provision of section 269SS was brought under the statue intending to deterring the assessee of justifying unaccounted cash found during search/survey. As such the object of the provision of section 269SS was to discourage the assessee to justify their unaccounted money by taking cash entries from different persons. In the case on hand, the genuineness of the transaction was not doubted by the authorities below. Therefore, the penalty cannot be levied u/s 271D of the Act.

6.4 Without prejudice to the above the Ld. AR for the assessee also submitted the penalty can be levied on the amount exceeding Rs. 20,000/- as specified u/s 269SS of the Act. Accordingly, the Ld. AR prayed to give the relief from the penalty for the basic amount of cash transaction of Rs. 20,000/-. The Ld. AR in support of his claim relied on the judgment of Honøble Rajasthan High Court in the case of CIT Vs. Ajanta Dyeing & Printing Mills reported in 264 ITR 505.

7. On the other hand the Ld. DR submitted that there was bank account of the father of the assessee. Therefore, there was no reason to advance the money to the assessee in cash.

7.1 The money received by the assessee in cash was invested in the Securities. The assessee received the cash on different dates in piece meals which suggest that it was the trading transaction.

7.2 Had the cash received by the assessee been in the nature of gift then the assessee should have taken the same in a single installment instead of piece meals on different dates.

7.3 There was no reasonable cause furnished by the assessee for accepting the loan in cash. Therefore no immunity can be given under the provision of section 271D of the Act.

7.4 In view of the above, the Ld. DR submitted that the cash received by the assessee is representing the unsecured loan which was accepted against the provision of section 269SS of the Act. The Ld. DR vehemently supported the order of the authorities below:

8. We have heard the rival contention and perused the materials available on record.

8.1 From the preceding discussion we note certain facts as detailed under:

- i) The AO did not doubt the genuineness of the transaction. Otherwise the same should have been treated as unexplained cash credit u/s 68 of the Act.
- ii) The transaction was carried out with the father of the assessee.

9. At this juncture we find important to refer to the Circular issued by the CBDT bearing No.387 dated 06/07/1984 which reads as under:

**CIRCULAR No.387**  
**Explanatory notes on the provision of the Finance Act, 1984.**  
**BENAMI**

**LOANS AND DEPOSITS**

**S 281A**

**269SS**

**276DD**

(xxiv) *Prohibition against taking or accepting certain loans and deposits in cash*

*32.1 Unaccounted cash found in the course of searches carried out by the IT Department is often explained by taxpayers as representing loans from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and taxpayers are also able to get confirmatory letter from such persons in support of their explanation.*

*32.1 With a view to countering this device, which means taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new s. 269SS in the IT Act debarring person from taking to accepting, after 30<sup>th</sup> June, 1984 from any other persons any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs.10000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or the aggregate amount of such loan and deposit is Rs.10000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs.10,000 or more. The prohibition will also apply in cases where the amount of such loan or deposit, together with the aggregate amount remaining unpaid on the date of which such loan or deposit is proposed to be taken is Rs.10,000 or more.’’*

9.1 From the above we note that the provision of section 269SS was brought under the statue to discourage the assessee to justify their unaccounted money. However, in the case on hand, there is no allegation that the assessee has introduced unaccounted money in his business. Thus, keeping in view the object of the provision of section 269SS of the Act the cash transaction which is genuine cannot be brought under the net of tax under the provision of section 269SS of the Act.

9.1 We also note that such transactions between the relatives and sister concern are not subject to the provisions of section 269SS of the Act.

9.2 In the similar facts and circumstances the Bangalore Bench of ITAT in the case of G.D. Subraya Sheregar vs. Income-tax Officer, Ward 2, Udupi (10 SOT 378) has decided the issue in favor of the assessee the relevant extract of the order is reproduced as under:

*“6. The expression "any other person" appearing in section 269SS has been interpreted by the two Benches of the Tribunal in two different ways. One view is that the said expression excludes all those persons who are closely connected with the assessee and the other view is to the opposite effect. Both views are possible views. It is well-settled that there are two possible views, the view favourable to the assessee will have to be accepted [Refer CIT v. Madho Pd. Jatia [1976] 105 ITR 179 (SC)]. Therefore, the transactions between closely related persons such as father and son must be held to fall outside the scope of section 269SS.”*

9.3 In view of the above proposition we are of the opinion that the genuineness of the cash transaction has not been doubted between the son and father. Therefore, the penalty levied u/s 271D of the Act is not sustainable.

9.4 It is an undisputed fact that the Gift Deed was not prepared at the relevant time. The controversy arises merely delay in preparation of Gift Deed can cause prejudice to the assessee by holding that the cash transaction is not in the nature of the gift. In this regard we note that a Gift Deed is nothing but an understanding in writing which proves/establishes the nature of transaction carried out between the parties. Once the donor has agreed/confirmed that he had given a gift to the assessee, then the same cannot be denied merely on the ground that the Gift Deed was not prepared at the relevant time.

9.5 Further, without prejudice, even if it was given a loan at that relevant time and later on the parties agreed to treat the same as a gift, then the matter ends here as the transaction is between son and father which was substantiated with the gift deed and confirmation.



9.6 There is the basic difference between the gift and loan/Deposit. A gift is never paid back/return to the donor while it is not so in the case of the loan. However there is nothing on record which shows that money is paid back to the father by the assessee directly or indirectly.

9.7 In view of the above, we are inclined to reverse the order of authorities below. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty u/s 271D of the Act. Hence, the ground of appeal of the assessee is allowed.

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

**Order pronounced in the Court on 01/01/2019 at Ahmedabad.**

**-Sd-  
(MS MADHUMITA ROY)  
JUDICIAL MEMBER**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 01/01/2019

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**आदेश का प्रत/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. क्षेत्रीय प्रमुख, आयकर अपील आधिकरण / DR, ITAT,
6. गार्डफाइल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपील आधिकरण, अहमदाबाद / ITAT, Ahmedabad