IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "C", BANGALORE

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.116(Bang)/2019
(Assessment Year : 2014-15)

Smt.Savita S Gangadshetti,
Gorbal Naka, At Ilkal, Tal. Hungund,
Bagalkot Dist.
Pan No.ACLPG6870B — Appellant

Vs

The Joint Commissioner of Income Tax,
Vijayapur Range,
Vijayapur. — Respondent

Appellant by : Shri B.S.Balachandran, Advocate
Revenue by : Shri M. Vijaykumar, Addl.CIT

Date of hearing : 07-11-2019
Date of pronouncement : 20-01-2020

O R D E R

PER SHRI B.R.BASKARAN, ACCOUNTANT MEMBER :

The appeal filed by the assessee is directed against the order dated 01-11-2018 passed by the CIT(A), Belagavi confirming the penalty of Rs.12.50 lakhs levied by the AO u/s 271E of the IT Act, 1961 for violation of provisions of sec.269T of the Act, 1961.

2. The facts relating to the above said issue are stated in brief. The AO noticed that the assessee has taken money from her husband named Shri S.Gongashetti to the tune of Rs.12.50 lakhs. The amount

was received from Shri Gongashetty and Gongashetty (HUF). The details of the amount received and repaid are tabulated below;

Sl.No.	*Date*	*Amount(Rs.)*
1	*31-08-2013*	*5,00,000.00*
2	*02-09-2013*	*1,00,000.00*
3	*04-09-2013*	*1,50,000.00*
4	*15-09-2013*	*5,00,000.00*
	Total	*12,50,00,00.00*

Accordingly, the JCIT, Vijayapur, initiated penalty proceedings u/s 271D and 271E of the IT Act, 1961 respectively for accepting and for repaying the above said amount by way of cash in violation of the provisions of section 269SS & 269T of the Act, 1961 respectively. The assessee submitted before the ld. JCIT that she has received the above said amounts as giftf from her husband in his individual as well as HUF capacity and the same was credited in her capital account. Thereafter, gift was given by her to her husband and the HUF. The assessee submitted that these gifts are genuine transactions and no evasion of tax is involved. Accordingly, the assessee pleaded that the penalty proceedings may be dropped. The Ld. JCIT, however, took the view that the assessee is claiming the receipt and payment of money as gift in order to escape from the provisions of sec. 269SS and sec.269T of the IT Act, 1961. Further, he took the view that the impugned transactions are only loan transactions entered under the garb of gift transactions. The Ld JCIT, further noticed that the assessee as well as her husband are having bank account with the same bank. Accordingly, he took the view that there was no reason

as to why the loan transactions were done by way of cash. Accordingly, he took the view that these transactions entered in violation of provisions of sec.269SS & 269T shall attract penalty provisions of sec. 271D & 271E of the Act. Accordingly, he levied penalty of Rs.12.50 lakhs each both u/s 271D & u/s 271E of the IT Act, 1961.

3. The ld.CIT(A) agreed with the view of Ld JCIT that these are loan transactions only. The Ld CIT(A) deleted the penalty levied u/s 271D of the Act. With regard to the penalty levied u/s 271E of the Act for repayment of loan by way of cash, the Ld CIT(A) took the view that the assessee has failed to show any reasonable cause. Accordingly, he confirmed the penalty of Rs.12.50 lakhs levied by the AO u/s 271E of the IT Act, 1961.

4. The ld.AR submitted that the impugned transactions entered by the assessee with her husband (both in the individual capacity and HUF) are gift transactions only. The assessee had received gift from her husband and the same was credited to her husband account. The repayment was debited to the capital account of the assessee. He further submitted that the tax authorities are not justified in treating these transactions as loan transactions. He further submitted that, even if it is considered as loan transactions, the penalty u/s 271E should not have been levied as the transactions entered between close relatives are considered to fall under reasonable cause. For this preposition, he placed reliance on the decision rendered by the Co-ordinate Bench of this Tribunal in the case of *Smt. Deepika vs. ACIT in ITA No.561/Bang/2017 dated 13.10.2017.*

5. On the contrary, ld.DR supported the order passed by the ld.CIT(A).

6. We have heard the rival contentions and perused the record. It is the claim of the assessee that the impugned transactions are gift transactions. According to the assessee, she has received gift from her husband (in individual status and HUF status) by way of cash. Thereafter, she has given gift to her husband by way of cash. Since the gift amount received and repaid was the same, the tax authorities have taken the view that these transactions are loan transactions. Since they were entered by way of cash in contravention of provisions of section.269SS/269T of the IT Act, 1961, the Ld JCIT has levied penalty u/s 271D/271E of the IT Act, 1961. We noticed that the ld.CI(A) has deleted the penalty levied u/s 271D of the Act, 1961, but confirmed the penalty levied u/s 271E of the Act. It is the case of the assessee that, even if it is considered as loan transactions, the penalty is not leviable, since the loan transactions between close relatives are considered to constitute reasonable cause in terms of sec.273B of the Act.

7. In the instant case, there is no dispute between parties that the assessee has received loan from her husband and re-paid the loan to him. The assessee has placed reliance on the decision rendered by the Co-Ordinate Bench of this Tribunal in the case of *Smt. Deepika vs. ACIT in ITA No.561/Bang/2017 dated 13.10.2017,* wherein the Tribunal has held that the loan transactions between the close relatives would not attribute penalty u/s 271D of the Act, 1961. For the sake of convenience, we extract below the relevant observations made by the Co-Ordinate Bench in the aforesaid case.

> *"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 :-*
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> *"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 that 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 said to 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 assessees, based on an act of casualness, especially 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."

8. In the case of M. Yeshodha (supra), the Hon'ble Madras HighCourt has taken the view that the transaction of loan between father-in-law and daughter-in-law cannot be subject matter of penalty u/s 271D of the Act. In the instant case, the claim of the assessee is that these transactions are only gift transactions. However, the assessee appears to have failed to substantiate the same and hence the tax authorities have taken the view that the impugned transactions are loan transactions. The assessee was constrained to offer explanations relating to business exigencies only for the reason that the tax authorities have considered these transactions as loan transactions. The Ld CIT(A) has accepted the explanation of business exigency and accordingly deleted the penalty u/s 271D of the Act. Since the transactions have been entered between assessee and her husband, we are of the view that the decision rendered by Hon'ble Madras High Court in the case of M Yeshodha(supra) may be conveniently applied here.

9. Accordingly, we are of the view that the penalty levied u/s 271E of the Act, 1961 is not sustainable. Accordingly, we set aside the order passed by the ld.CIT(A) and direct the AO to delete the penalty.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 20-01-2020.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	**(B.R.BASKARAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20-01-2020

***am**

Copy of the Order forwarded to:

1.Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5.DR
6.ITO (TDS)
7.Guard File

By Order
Asst.Registrar