

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 518/Mum/2022**

(Assessment Year 2015-16)

Sameer Noorullah Khan  
K Raheja Prime  
Office no.9, 9<sup>th</sup> Floor,  
Behind Times Square Bldg,  
Sag Baug Road, Marol Naka,  
Andheri (East)  
Mumbai-400 059

Vs.

CIT (A)-32  
Kautilya Bhavan,  
9<sup>th</sup> Floor,  
Room No.945, BKC,  
Bandra (E)  
Mumbai-400 50

**(Appellant)**

**(Respondent)**

**PAN No. ALRPK 5260 A**

**Assessee by** : Shri Vimal Punmiya, AR  
**Revenue by** : Shri Tejinder Pal Singh Anand,  
DR

**Date of hearing:** 16.08.2022  
**Date of pronouncement :** 16.08.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 518/Mum/2022 is filed by the assessee against the order passed by the National Faceless Appeal Centre, Delhi [The learned Commissioner of Income-tax (Appeals) [CIT (A)]] under Section 250 of the Income-tax Act, 1961 (The Act), dated 29<sup>th</sup> December, 2021 for A.Y. 2015-16, wherein the penalty levied under Section 271D of the Act by The Joint Commissioner of Income Tax, Range-20(3), Mumbai (The learned JCIT ) of ₹18 lacs was confirmed.



02. The assessee has challenged it per solitary ground of appeal that the learned CIT (A) erred in confirming the levy of penalty of ₹18 lacs under Section 271D of the Act.
03. The brief facts of the case show that assessee is an individual engaged in tours and travels business. He filed his return of income for A.Y. 2015-16 on 1<sup>st</sup> October, 2015 declaring total income of ₹21,90,600/-. Subsequently, the return was picked up for scrutiny. During the course of hearing, the learned Assessing Officer found that assessee has borrowed cash loan of ₹18 lacs from 11 different parties from 3<sup>rd</sup> February, 2015 to 12<sup>th</sup> February, 2015. During the course of assessment proceedings, the above loan was considered as genuine and no additions under Section 68 of the Act were made. The learned Assessing Officer noted that as assessee has borrowed cash loan from 11 parties of ₹80 lacs which is more than ₹20,000/- in each case, penalty proceedings under Section 271D read with section 269SS of the Act is initiated for accepting loan of ₹18 lacs in cash. Consequently, an assessment order under Section 143(3) of the Act was passed on 14<sup>th</sup> December, 2017 assessing total income of the assessee at ₹44,20,600/-.
04. Subsequently, the fact was brought to the notice of the Addl. CIT, Range-20(3), Mumbai by the learned Assessing Officer vide letter dated 12<sup>th</sup> June, 2018. Show cause notice under Section 271D of the Act was issued to the assessee on 14<sup>th</sup> June, 2018.



05. In response to the notice, assessee submitted that assessee has carried out the business and assessee was in deep financial crisis, the above loan was obtained in cash. It was stated that the loan was taken for the housing purposes as post dated cheques were issued.
06. The learned Addl. CIT considered the explanation of the assessee but stated that assessee is liable for penalty under Section 271D of the Act of the sum equal to the amount of loan accepted and as assessee's case does not fall within the 'reasonable clause' as per Provision of Section 273B of the Act, he levied the penalty of ₹18 lacs as per order dated 7<sup>th</sup> December, 2018.
07. Assessee preferred the appeal before the National Faceless Appeal Centre, Delhi and reiterated the reasonable cause of housing loan and financial crisis. The learned CIT (A) issued several notice to the assessee but same remained un-complied with and therefore, on the merits found that there is no need to interfere with the levy of penalty under Section 271D of the Act. Accordingly, the penalty levied of ₹18 lacs under Section 271D of the Act was confirmed by order dated 29<sup>th</sup> December, 2021. Thus, assessee is aggrieved with the order and preferred the appeal before us.
08. The learned Authorized Representative submitted a paper book containing 83 pages and also submitted written submission of 11 pages. In the return submission, it was stated that assessee has reasonable cause for accepting the cash loan. The assessee has purchased an immovable

property from M/s Dimple Enterprises and has issued five post dated cheques. As the assessee was required to honour the post dated cheques on the due date to avoid any commercial proceedings under Section 138 of the Act negotiable instruments Act, 1881, assessee obtained cash loan of ₹18 lacs from the near relatives. The same cash was deposited in the bank account for clearance of the cheque issued to the Dimple Enterprises. It was also stated that all the cheques were honored by deposit of the above cash amount. He therefore submitted that as the Dimple Enterprises was demanding the immediate payment of the above cheques as per letter dated 13<sup>th</sup> February, 2015, the above loans were accepted in cash. He also stated that all the parties are his brother, nephew and brother in law i.e. only near relatives. All these parties have confirmed the payment of cash loan to the assessee. He therefore, submitted that there is a reasonable cause for acceptance of such cash loans and therefore, the penalty should not have been levied. He further submitted that the case laws relied upon by the learned Assessing Officer, are not applicable to the facts of the case. He relied on the decision of Hon'ble Madras High Court in case of CIT vs. Shri. T. Perumal (Indl.) dated 29<sup>th</sup> October, 2014, which held that receipt of payment of cash from friends due to business exigencies would amount to reasonable cause in terms of Section 273B of the Act. He further relied on the decision of Hon'ble Punjab and Haryana High Court in case of CIT vs. Sunil Kumar Goel [2009] 315 ITR 163 (Punjab & Haryana) dated 3<sup>rd</sup> March,

2009 to state that family transactions are not covered for levy of penalty under Section 271D of the Act. He further relied upon other judicial precedent to support its case.

09. He also submitted that in this case, the assessment order was passed on 14<sup>th</sup> December, 2017, wherein the order passed levying penalty under Section 271D of the Act was passed on 7<sup>th</sup> December, 2018 and therefore, it is barred by limitations. According to him, such order should have been passed on or before 30<sup>th</sup> June 2018 . he referred to provision of section 275 (1) © of the act and submitted that limitation would begin to run from date on which the Assessing Officer recommended for issuance of show cause notice for initiating penalty proceedings. He further referred to the Provisions of Section 275 of the Act, the penalty should have been completed on or before 30<sup>th</sup> June , 2018 .
010. The learned Departmental Representative vehemently supported the order of the lower authorities. He submitted that there is no reasonable cause shows by the assessee for accepting the cash loan. He submitted that if the assessee has had obligation for clearance to cheque issue, assessee could not obtain loan from the parties by NEFT or other banking mode. Therefore, assessee has clearly violated the Provisions of Section 269SS of the Act and penalty is rightly levied. On the issue of passing of the order, he submitted that the order passed by the Addl. CIT on 7<sup>th</sup> December, 2018, wherein the learned Assessing Officer brought to the notice of the Addl. CIT vide letter

dated 12<sup>th</sup> June, 2018. Therefore, the penalty order is passed within six months of the intimation by the learned Assessing Officer.

011. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the assessment order under Section 143(3) of the Act was passed by the learned Assessing Officer on 14<sup>th</sup> December, 2017, wherein the learned Assessing Officer has categorically mentioned that the penalty proceedings under Section 271D read with section 269SS of the Act is initiated for accepting the loans of ₹18 lacs in cash.

012. According to the provisions of Section 275(1)(c) of the Act, no order for imposing the penalty shall be passed after the expiry of the financial year in which the proceedings and in case of which action for imposition of penalty has been initiated are completed, or six months from the end of the month in which action for imposition of penalty is initiated, which ever expires later. Therefore, there are two specific period of limitation for passing a penalty order that expires later should be the outward limit of time by which the penalty orders should have been passed. In the present case, the penalty proceedings are initiated as per order dated 14<sup>th</sup> December, 2017, therefore, according to that, the penalty order could not have been passed later than 31<sup>st</sup> March, 2018. Second Possible time limit is expiry of six months from the month in which the penalty proceedings were initiated. The penalty proceedings have been initiated by the learned



Assessing Officer in the month of December 2017 and the last date by which the penalty order could have been passed is 30<sup>th</sup> June, 2018. The later of the two dates is 30<sup>th</sup> June, 2018. In the present case, the penalty order is passed on 7<sup>th</sup> December, 2018 and therefore, it is barred by the limitation of time. Hon'ble Delhi High Court in PCIT vs. JKD Finance Ltd in 376 ITR 614 has held so. Therefore, respectfully following the decision of Hon'ble Delhi High Court, we hold that impugned penalty order under Section 271D of the Act passed on 7<sup>th</sup> December, 2018 is barred by limitation and hence, quashed.

013. Accordingly, we quash the penalty proceedings levied under Section 271D of the Act of ₹18 lacs.

014. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on 16.08.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:16.08.2022

*udip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai