

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 195/Ahd/2022  
Assessment Year 2017-18**

Narendrakumar Chunilal Soni, Nana Ubhada, Viramgam, Ahmedabad-382150  PAN: ANEPS3522J (Appellant)	Vs	The Joint Commissioner of Income Tax Range- 3(2), Ahmedabad  (Respondent)
--	----	--

**Assessee Represented: Shri HIRAK SHAH, Advocate  
Revenue Represented: Shri RAKESH JHA, Sr.D.R.**

Date of hearing : 13-03-2023  
Date of pronouncement : 17-05-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Appellate order dated 25.03.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the levy of penalty under section 271D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is an individual and engaged in the business of repairing of gold/silver ornaments. For the Assessment Year 2017-18, the assessee filed its Return of Income on 29.03.2018 declaring total income of Rs.4,82,280/-. The assessee's case was selected for scrutiny assessment, since cash deposits were made during demonetization period. The assessee was asked to furnish source of cash deposit alongwith documentary evidences and copy of the bank statements. The assessee replied that the cash deposit is out of his sale proceeds of residential flats and his income from repairing of gold/silver ornaments. In support of the same, the assessee submitted copy of the sale deed, cash book and bank statement. The Assessing Officer issued a summons u/s. 133(6) of the Act to the purchaser of the flat and received reply from the purchaser and satisfied with the explanation offered by the purchaser that she being an agriculturist, purchased the flat from the assessee by cash transaction. Thus the Assessing Officer completed the assessment accepting the returned income as the assessed income.

3. It is, thereafter the assessee was issued a notice u/s. 274 read with section 271D dated 08.07.2019 calling for explanation on the cash transaction in connection with violation of section 269SS of the Act. The assessee replied that during the year, he sold his immovable property for a sum of Rs. 7,93,000/- to Smt. Sushilaben Bharatbhai Pujara. The purchaser being an agriculturist from a small village, she paid the sale consideration of Rs. 7,93,000/- by cash, which is being duly and truly reflected in the Registered Sale Deed and also in the Return of Income filed by the assessee.

Further the assessee was not aware of the violation of Section 269SS which will attract penalty u/s. 271D of the Act. The above explanation offered by the assessee was not accepted as satisfactory, therefore the Joint Commissioner levied a penalty u/s. 271D of Rs. 7,93,000/-.

4. Aggrieved against the same, the assessee filed an appeal before Ld. NFAC (Delhi). The Ld. NFAC considered the submissions of the assessee and held that as per the explanation to Section 269SS, “specified sum” means any sum of money receivable in relation to transfer of an immovable property also. In this case, undisputedly, the assessee has received a sum of Rs. 7,93,000/- in cash as sale consideration for transferring the immovable property which is clear violation of the provisions of section 269SS of the Act. The assessee has not demonstrated any “reasonable cause” for violation of the above provisions of law. Therefore Ld. NFAC confirmed the levy of penalty u/s. 271D of the Act of Rs. 7,93,000/-.

5. Aggrieved against the same, the assessee is in appeal before us raising elaborate grounds of appeal, which are argumentative in nature. However the solitary issue is violating the provisions of Section 269SS of the Act and thereby levy of penalty, which is liable to be deleted on “reasonable cause” as demonstrated by the assessee.

5.1. Ld. Counsel reiterated the Grounds of Appeal and relied upon judgment of the Jurisdictional High Court in the case of CIT vs. Maa Khodiyar Construction reported in [2014] 45 taxmann.com 566 (Gujarat), Judgment of High Court of Jharkhand in the case of

OMEC Engineers vs. CIT reported in [2018] 169 taxmann.com 158 (Jharkhand) and Jodhpur Bench of the Tribunal decision in the case of ITO vs. Prabhulal Sahu reported in [2006] 99 TTJ 177. Thus the Ld. Counsel for the assessee pleaded to delete the penalty levied u/s. 271D of the Act.

6. Per contra, the Ld. Sr. D.R. appearing for the Revenue supported the concurrent findings of the lower authorities and requested to uphold the same and thereby dismiss the assessee's appeal.

7. We have given our thoughtful consideration and perused the materials available on record. It is an undisputed fact that the assessee sold immovable property for consideration of Rs. 7,93,000/- to Smt. Sushilaben Bharatbhai Pujara who is an agriculturist from a small village, wherein Banking facilities are not available. However the above cash sale consideration is very much reflected in the Registered Sale Deed which was executed on 09.05.2016 by the Purchaser. When the Purchaser was summoned u/s. 133(6) of the Act by the A.O. he was satisfied with the reply of the Purchaser and passed the assessment order accepting the Returned Income without making any additions. Thus, the grievance made out by the assessee is found to be genuine and reasonable cause. In the above circumstances the levy of penalty under Section 271D in our considered opinion is unwarranted.

7.1. For better understanding of the provisions and "reasonable cause", section 271D and 273B are extracted below:

*271D. Penalty for failure to comply with the provisions of [section 269SS](#).*

*(1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of [section 269SS](#), he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted.*

*(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner*

**273B. Penalty not to be imposed in certain cases:**

*“Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, **section 271D**, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or subsection (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of subsection (2) of section 273, **no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.**”*

7.2. A perusal of the above provisions makes it clear in as much as that levy of penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the Act. A careful reading of Section 273B encompasses that certain penalties “shall” not be imposed in cases where “reasonable cause” is successfully pleaded. It is seen that penalty imposable under Section 271D is also included one among the exclusions. By the said provisions, the Parliament has unambiguously made it clear that no penalty “shall be” imposed, if the assessee “proves that there was a reasonable cause for the said failure”. As noticed, if the statutory provision shows that the word “shall” has been used in Section 271D, then the imposition of penalty would have been mandatory. Section 273B as noted further throws light on the legislative intent, as it specifically provides that no penalty “shall” be imposed, if the

assessee proves “that there was reasonable cause for the said failure”.

8. Further the Jurisdictional High Court in the case of Maa Khodiyar Construction (cited supra) held that no penalty is leviable u/s. 271D for cash loans exceeding Rs. 20,000/- from agriculturists living in remote areas when transaction were not doubted. Invoking section 273B of the Act as follows:

*“... 9. Section 269SS of the Act at this stage requires consideration alongwith Sections 271D and 273B of the Act. Any loan or deposit, if accepted by any person otherwise than by an account payee cheque or account payee bank draft from any person exceeding rupees twenty thousand rupees or more. Section 269SS of the Act prohibits the same after the 30th June 1984. Section 271D makes such person who received the amount in contravention of provision of Section 269SS liable for penalty, a sum equal to the amount of loan or deposit so accepted. Section 273B of the Act of course carves out the way in certain cases and provides that no penalty shall be imposable on the person or the assessee, as the case may be. for any failure referred to in the said provisions which includes Section 271D if he proves that there was reasonable cause for the said failure.*

*10. What is therefore necessary to prove is the reasonable cause by the assessee on its having failed to abide by the conditions incorporated in the said provision of Section 269SS.*

*11. Reverting to the facts of the instant case, a sum of Rs. 42.75 lakhs has been taken by way of loan by the respondent from ten different persons. Admittedly, this was by way of loan in cash exceeding rupees twenty thousands and the same therefore contravenes the provision of Section 269SS of the Act.*

*12. For not inviting the rigour of penalty u/s. 271D of the Act as consequence, on the part of the assessee, the reasonable cause needs to be shown. What is pleaded by the respondent was that all these persons were agriculturists and that the genuineness of the transactions at no point of time had been doubted by the Revenue. They stayed in remote areas. Both the authorities, therefore, were of the opinion that reasonable cause had been sufficiently made out and when the very transactions were never doubted by the Revenue authorities. The breach is to be treated as a mere technical or venial breach.*

*13. We notice that the requirement of Section 273B is for the assessee to prove that there was a reasonable cause for its having failed to abide by*

*the provisions of Section 269SS. As emerges from the record, not only the substantiating evidence like 7/12 Extracts were produced. But, also additionally, transactions were reflected in the accounts of assessee and the advancement of loan to the assessee had been reflected in the books of account of those persons from whom the loan had been received. The identity of those persons has also been well established. The assessee also had given satisfactory reason for taking such loan. His bona fide belief that such transactions would not attract provision of Section 269SS on the ground that they were agriculturists and lived in remote villages also was one of the grounds which has weighed with both the authorities.*

*14. In view of forgoing discussion, we are of the opinion that no error has been committed by both the authorities below in deleting the penalty. It is true that the respondent has income from other business and these transactions were not between agriculturists having only agriculture income, not liable to tax which have been exempted from such rigor of law and yet, the cause advanced is when found to be sufficiently reasonable, no interference would be desirable.”*

8.1. The Hon'ble Jharkhand High Court in the case of OMEC Engineers (cited supra) interpreted the expression 'sufficient cause' in the context of levy of penalty and deleted the same as follows:

*“...22. The words 'reasonable cause' have not been defined under the Act but they could receive the same interpretation which is given to the expression 'sufficient cause'. Therefore, in the context of the penalty provisions, the words 'reasonable cause' would mean a cause which is beyond the control of the assessee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides. Before imposition of penalty under section 271, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions.*

*23. In the instant case, as noticed above, there is no finding of the assessing authority, the appellate authority or the Tribunal that the transaction made by the assessee in breach of the provisions of section 269SS was not a genuine transaction. On the contrary, the return filed by the assessee was accepted after scrutiny under section 143(3) of the Act. Further, there is no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was mala fide and with the sole object to disclose the concealed or undisclosed money. The authorities have proceeded on the basis that breach of condition provided under section 269SS of the Act shall lead to penal consequences. In our view, in the facts and circumstances of the case, the imposition of penalty merely on technical mistake committed by the assessee, which has not resulted in any loss of revenue, shall be harsh and cannot be sustained in law.”*

9. Respectfully following the above decisions of the High Courts, we have no hesitation in cancelling the penalty levied u/s. 271D of the Act. Thus the ground raised by the assessee is hereby allowed.

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

Order pronounced in the open court on 17-05-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 17/05/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद