

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1201/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

Smt. Meera Devi Kumawat, JMC-72, Vijaybari, Path No. 7, Sikar Road, Jaipur	बनाम Vs.	Joint Commissioner of Income Tax, Range-4, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AGZPK1841L		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Rahul Sanghi (CA)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 09/09/2021
उदघोषणा की तारीख/Date of Pronouncement: 21/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 28.06.2019 pertaining to A.Y 2009-10 wherein the assessee has challenged the confirmation of levy of penalty u/s 271D of the Act.

2. At the outset, it is noted that there is a delay in filing the present appeal. After hearing both the parties and considering the material placed on record, the delay so happened in filing the present appeal is hereby condoned and the appeal is admitted for adjudication.

3. During the course of hearing, the Id. AR submitted that the Appellant is an illiterate individual having income from renting of marriage garden situated at Vijay Bari, Sikar Road, Jaipur. The case of her husband Sh. Babu Lal Kumawat for the AY 2009-10 had come up for inquiry before ITO (Inv), Jaipur. In the inquiry before ITO (Inv), Jaipur, it has been submitted by Shri Babu Lal Kumawat that he has given loan of Rs. 9,00,000/- to his wife. Thereafter, ITO (Inv), Jaipur reported the matter to JCIT, Range 4, Jaipur and a notice u/s 274 r.w.s. 271D of Income Tax Act, 1961 was served on the assessee by JCIT, Range – 4, Jaipur on 15.03.2016. The assessee was asked to show cause as to why penalty u/s 271D should not be levied. In response to the show- cause notice, the assessee has submitted that she has received Rs. 6,00,000/- from her husband by way of demand draft for payment towards purchase of plot no. 356 and remaining Rs. 3,00,000/- was received in cash as the assessee is wife of Sh. Babu Lal Kumawat and cash of Sh. Babu Lal Kumawat remains in custody of the assessee and cannot be treated as loan. The assessee has also submitted that the cash of husband and wife cannot be separated as it is in joint custody therefore cannot be taken as loan. The assessee has also submitted that in the case of husband and wife, repayment is not mandatory and there is no interest burden therefore it is not justifiable to impose penalty u/s 271D. It was submitted that not appreciating the submissions made by the assessee, the JCIT, Range – 4, Jaipur has raised a demand of Rs. 3,00,000/- by levying penalty u/s 271D of the Income Tax Act, 1961.

4. Aggrieved by the said order, the assessee has filed an appeal before the Id CIT(A), Jaipur. The assessee has submitted all the facts before the Id CIT(A) and also quoted case law of "Shri Sunil Kumar Sood v/s JCIT (ITAT Delhi) but the Id CIT (A) has not considered the facts and quoted

case law of the assessee and rejected the appeal of the assessee. Against the said order and findings of the Id CIT(A), the assessee is in appeal before the Tribunal.

5. It was submitted by the Id A/R that provision of Sec 269SS do not bar genuine cash transactions of loan, but only bar those transactions which are entered with the intention of evade taxes. These provisions are made to counteract evasion of tax but not to bar cash transactions between close relations. It was submitted that the instant case is not the case where unaccounted cash was found in the course of search and seizure operations. The assessee was helped by her husband for acquiring property which one was for the residence of family members. In our case the assessee has not evaded any tax but only purchase a property with the help of her husband for residence of her family members.

6. It was submitted that Section 269SS is applicable to the deposit or loan. There is a relationship of debtor and creditor between the party giving money and the party receiving money in every deposit or loan. In 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 party who customarily accept deposit. In 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 our case there is no relationship of debtor and creditor between husband and wife and there is also no interest part in the amount. The assessee has only used the money received from her husband in purchase of property used for residence purpose of all of her family members. There

is no beneficial interest of only one person. It was prosperity of family and transaction did not involve any interest element, and there was no promise to return amount with or without interest. Hence, the provisions of section 269SS would not apply and it can safely be held that there was a reasonable cause within the meaning of section 273B of the Income Tax Act, 1961. Accordingly, no penalty should be levied for violation of the provisions of section 269SS of the Act. It was further submitted that the transaction in question was a genuine transaction and there was no scope for suspicion. It was also submitted that the assessee has entertained a bona fide belief that she had received contribution from her family member and, therefore, there was no violation of the provisions of section 269SS of the Act.

7. It was submitted that the Hon'ble Rajasthan High Court in the case of CIT Vs Raj Kumar Sharma (2007) 294 ITR 131 (Raj) has held as under:

"7. Section 271D of the Income-tax Act provides for penalty for failure to comply with the provisions of Section 269SS of the Income-tax Act. According to this provision, if a person, inter alia, accepts any loan in contravention of the provisions of Section 269SS of the Income-tax Act, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit so taken or accepted. Section 273B is an overriding provision. According to the said provision, no penalty shall be imposable on a person or assessee for any failure, inter alia, referred to Section 271D if he proves that there was reasonable cause for the said failure.

8. The Tribunal in its order has found that the genuineness of the deposits made by the assessee's brother Pankaj Sharma was not in

doubt by the Assessing Officer. The Tribunal noticed the explanation given by the assessee that the deposits were obtained by him to satisfy the immediate business requirement but found that this has not been established. However, the Tribunal was thus of the view that there was a reasonable cause to accept the deposit otherwise through bank draft or through cheque because the assessee bona fide believed that the cash transactions below Rs. 20,000 was permissible.

9. It is true that the ignorance of law is no excuse, but the question here is whether the assessee was able to establish reasonable cause under Section 273B justifying that no penalty should be imposed in contravention of Section 271D of the Income-tax Act. None of the transactions exceeds, as noticed above, Rs. 20,000. The Tribunal accepted that the assessee bona fide believed that the cash transactions below Rs. 20,000/- was permissible and the cause shown by the assessee constituted reasonable cause. The finding of the Tribunal cannot be said to be grossly perverse or unsustainable in law. In our considered view, the appeal does not give rise to any substantial question of law. It is dismissed in limine”

8. It was submitted that the Hon'ble Punjab and Haryana High Court in the case of CIT v. Sunil Kumar Goel [2009] 315 ITR 163 has held as under:

"A family transaction, between two independent assesseees, 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."

9. It was submitted that ITAT Jaipur Benches in the case of M/s Paras Buildhome P. Ltd (ITA No. 803/JP/2016) has held as under:

"Therefore, considering the various case laws on this issue, no penalty should be imposed on the assessee for contravention of Section 271D of the Act. The above view also get supports from the various case laws relied by the Id AR of the assessee including decision of Hon'ble Rajasthan High Court in the case of CIT Vs. Raj Kumar Sharma (2007) 294 ITR 131 (Raj) and decision of ITAT, Jaipur Bench in the case of Smt. Kusum Dhamani Vs Addl. CIT in ITA No. 847/JP/2011. Therefore, by considering the totality of facts and circumstances of the case, I delete the penalty sustained by the Id. CIT(A)."

10. It was submitted that ITAT Jaipur Benches in the case of Smt Kusum Dhamani (ITA No. 847/JP/2011) has held that:

"We have heard the rival submissions and perused the relevant material available on record. From the record there is no shred of doubt about the genuineness of the transactions and their disclosure in the books of account and returns of both the assessee who happen to be husband and wife, carrying on the business as sister concerns. Section 271D read with Section 269SS was introduced by the

legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. The assessee has given an explanation in our view is not unreasonable and is based on business exigencies also for payments to laborers and lenders. Under these circumstances, we are of the view that the transactions being genuine and the assessee having offered reasonable explanation justifying these cash transactions, the impugned penalty u/s 271D is not leviable. Our view is fortified by the judgement of Honble Jurisdictional High Court in the case of CIT vs. Raj Kumar Sharma (supra) and the judgement of Honble Punjab & Haryana High Court in the case of CIT vs. Saini Medical Store (supra) which is followed by Honble P & H High Court in the case of CIT vs. Sunil Kumar Goel (supra). Thus in view 10 of the facts and circumstances of the case and the decisions relied on above, the penalty is deleted."

11. It was submitted that ITAT Delhi Benches in the case of Shri Sunil Kumar Sood Vs JCIT (*ITA No. 1831/Del/2016*) that Section 269SS not applies to loan transaction between husband and wife. Further, ITAT Kolkata Benches in the case of Tuhinara Begum Hoogly Vs JCIT Range 2, Hoogly (*ITA No. 2256/Kol/2014*) has held as under:

"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 273B. Therefore, the penalty should be deleted."

12. It was further submitted that ITAT Delhi Benches in the case of Shri Nabil Javed Vs ITO Ward 63(3) (ITA No. 3797 & 3798/Del/2018) held as under:

"Since in the present case also the assessee had taken the loan from his wife for the purchase of house which is for the benefit of the whole family, therefore, following the decision cited [supra], we hold that penalty levied u/s 271D of the Act in the instant case is not

justified. We, therefore, set aside the order of the Id. CIT(A) and 14 direct the Assessing Officer to cancel the penalty so levied. Grounds raised by the assessee are allowed."

13. It was submitted that ITAT Amritsar Benches in the case of ITO v. Tarlochan Singh [2003] 128 Taxman 20 (Mag) held 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 than 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."

14. It was submitted that in light of the above decisions of Hon'ble High Courts and ITAT, it is clear that Section 269SS do not apply in the case of transaction between close relations. In our case also, amount in question is not a loan but a financial help as appellant is not required to pay back the amount. The assessee has taken the said amount of cash to purchase the property which is used for residence of family members and does not take any loan from husband. Since the amount has been used not for the purpose of business and only used such amount for the benefit of family members, hence the same does not come in the ambit of Sec 269SS of the Income Tax Act. It was accordingly requested to delete the penalty as the transaction was not done for evasion of tax.

15. Per contra, the Id. D/R submitted that the contention raised by the learned counsel that section 269SS is not applicable where the loans and deposit transactions are between Husband and wife cannot be accepted. A perusal of section 269SS reveals that it bars any 'person' from taking or accepting loan from any other 'person' otherwise than by account payee cheque or account payee bank draft on fulfillment of certain conditions. The reference in this section is to a 'person'. Section 2(31) defines 'person' to include individual, HUF, company, firm, etc. It thus points out that no

person can take or accept loans or deposits subject to the provisions of this section from any other person otherwise than by an account payee cheque or account payee bank draft. In the body of the section, there is no stipulation which restrict its application only to entities outside the ground and family of the assessee. The assessee is a separate person and when she takes or accepts loan or deposits from her family members, such other distinct person also comes into picture. One person is giving loan and the assessee, another person, is accepting loan. It, therefore, boils down that two persons are involved in the transaction of accepting loan. To contend that the assessee and her husband are one and the same person is wholly in contravention of the provisions of the Act.

16. It was further submitted that the assessee has nowhere able to demonstrate the urgency to receive loan in cash. It was submitted that the assessee must prove beyond the shadow of the doubt that there existed a reasonable cause for not complying with the conditions contained in section 269SS and in the instant case, no plausible explanation was ever furnished nor the circumstances under which the cash was accepted was explained. It was accordingly submitted that it is a clear case the contravention of provisions of section 269SS of the Act. Thus, penalty u/s 271D of the Act has been rightly levied by the JCIT and confirmed by the Id. CIT(A). It was accordingly submitted that the order so passed by the Id. CIT(A) deserve to be confirmed as section 269SS nowhere provides exemption in respect of cash loan taken from husband and the appeal of the assessee be dismissed.

17. We have heard the rival contentions and perused the material available on record. We find that in the instant case, there is a transaction of purchase of plot of land and construction thereon. The plot of land has

been registered in the name of the assessee and source of such investment is money received from her husband. We find that such a practice of registering the property in name of the wife is guided by various family and societal factors besides encouragement of the Government for such transactions entered into by female members in the family by way of reduced stamp duty. In the present case, where the family of the assessee is guided by its internal family requirement and also by such policy incentive by the Government and at the same time, pooling in the family funds especially where the assessee doesn't have any known sources of income, the explanation of the assessee deserve to be appreciated and the approach of the authorities needs to be flexible for appreciating the reasonability of the explanation so submitted by the assessee. On persual of the registered sale deed, we find that there is payment of consideration by way of demand draft for Rs 6 lacs which has been paid in advance and remaining amount of Rs 1 lacs which has been paid in cash at the time of registry and handing over of the possession. It has been stated at the Bar by the Id AR that the assessee had no option but to discharge the remaining consideration in cash at the time of registry as so insisted by the seller of the property and in absence thereof, the deal might have not fructified. We find the explanation so furnished as reasonable and plausible and donot find any malafide in the explanation so submitted as everything is flowing from the registered sale deed where transactions have been duly documented including the payment through demand draft and cash which is from the known sources of funds contributed by the assessee's husband. Further, the assessee has explained the payment of construction expenses which are also required to be incurred in cash towards the purchase of construction material and payment to labourers. We therefore find that the assessee has offered reasonable explanation justifying the cash transactions and thus, in the

entirety of facts and circumstances of the case and considering various decisions cited at the Bar which also support the case of the assessee especially the decision of the Coordinate Bench in case of Tuhinara Begum where there was a reverse situation where the wife gave money to husband for construction of house which was held not exigible for levy of penalty u/s 271D, we are of the considered view that the assessee doesn't deserve to be punished by way of levy of penalty u/s 271D for receiving money from her husband for purchase of family property and hence, the same is directed to be deleted.

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

Order pronounced in the open Court on 21/10/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/10/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Smt. Meera Devi Kumawat, Jaipur
2. प्रत्यर्थी / The Respondent- JCIT, Range-04, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1201/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar