

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1220 & 1222/Bang/2016
Assessment Year : 2006-07 & 2008-09
ITA Nos.2355 & 2356/Bang/2018
Assessment Year : 2006-07 & 2007-08

The Deputy/Assistant Commissioner of Income Tax, Circle -6(3)(1), Bengaluru.	Vs.	Shri Sanjay Shenoy, No.333, Nova Miller, T Thimmaiah Road, Bengaluru. PAN – AWOPS 3523 J
APPELLANT		RESPONDENT

Appellant by	:	Shri. Amrit Raj Singh, JCIT, (DR)(ITAT), Bengaluru
Respondent by	:	Shri. V Srinivasan, Advocate

Date of hearing	:	25.10.2021
Date of Pronouncement	:	27.10.2021

ORDER

Per Bench :

These are appeals filed by the Revenue against the common order dated 23/3/2016 of CIT(A)-1, Bengaluru relating to asst. years 2006-07 and 2008-09, insofar as it relates to imposition of penalty u/s 271D of the Act and 2006-07 and 2007-08, insofar as it relates to imposition of penalty u/s 271E of the Act.

2. The assessee is an individual. It transpired during the course of search in the case of Smt. Adeline Kagoo and Dr. P Dayananda Pai on 12/4/2011

that Dr. P Dayananda Pai has paid a sum of Rs.1,04,50,000/- for the asst. year 2006-07 and a sum of Rs.1,25,00,000/- for the asst. year 2008-09, so also it transpired that the assessee has repaid a sum of Rs.1,72,00,000/- for the asst. year 2007-08 and Rs.2,88,50,000/- for the asst. year 2006-07 to Dr. P Dayananda Pai. All the aforesaid receipts and payments were in cash. As per the provisions of sec.269SS of the Act, no person shall accept from any other person any loan otherwise than by an account payee cheque where the sum of loan so taken is in excess of Rs.20,000/-. Similarly, sec. 269T of the Act provides that no person shall repay any loan otherwise than by account payee cheque, where the loan repaid is in excess of Rs.20,000/- u/s 271D of the Act. If there is a violations of sec. 269SS of the Act, the person so violating , shall be liable to pay penalty equal to the loan accepted in cash u/s 271E of the Act. Repayment of deposit in cash attracts the penalty in the hands of the person so repaid a sum equal to the sum of loan repaid in cash.

3. The proceedings u/s 271D and 271E of the Act were initiated against the assessee for taking loan in cash and repaying the loan in cash as mentioned above.

4. Under the provisions of sec. 273D of the Act, no penalty u/s 271D or 271E of the Act will be levied if the person against whom such proceedings are initiated proves that there is a reasonable cause for the failure to comply with the provisions of secs. 269SS and 269T of the Act.

5. The plea of the assessee in the proceedings for imposition of penalty was that the assessee was nephew of Dr. P Dayananda Pai and amounts were received purely for personal purposes of the assessee. The assessee also pointed out that more than 100 lakhs was given to Dr. P Dayananda Pai

by the assessee's father with the instruction to give it to the assessee whenever the assessee needs it for the specific purpose of purchasing an apartment. It was the plea of the assessee that the remaining sum was drawings by Dr. P Dayananda Pai from his Firm M/s Canara Housing Development Company in which he was a managing partner. The assessee, therefore, submitted that the source of Dr. P Dayananda Pai has been explained by Dr. P Dayananda Pai in his letter dated 21/2/2013 and 26/3/2013 filed before the Department and that the cash transactions were genuine. It was the plea of the assessee that the receipt of money by the assessee and its repayment cannot be characterized as 'loan' and, therefore, provisions of sec.269SS and 269T will not stand attracted. It was submitted that loans between near relatives in cash do not attract provisions of sec.269SS & 269T of the Act. The confirmation of Dr. P Dayananda Pai was also filed before the Revenue authorities and it was pleaded that monies were given purely out of family sentiments and keeping in mind that the assessee has lost his father. Dr. P Dayananda Pai being the uncle, given the money to the assessee.

6. The officer imposing penalty was however, not satisfied with the aforesaid explanation offered by the assessee. He held that there is a violation of sec. 269SS and 269T of the Act as loans were taken in cash in excess of Rs.20,000/- and were repaid in cash in excess of Rs.20,000/-. The AO also held that there was no reasonable cause for violation of provisions of sec. 269SS and 269T of the Act, which has been established by the assessee. The AO, accordingly imposed penalty u/s 271 D and 271E of the Act.

7. The first appellate authority i.e CIT(A) however, deleted the penalty imposed by the AO. The assessee had placed reliance on the decisions of the ITAT Amritsar bench and ITAT Indore Bench in the case of ITO Vs. Tarlochan Singh in ITA No.415/ASR/1996 dated 16/12/2002 and ITAT Indore Bench in the case of DCIT Vs. Mohan Karkare (1995) 52 ITD 236 wherein, it was held that transactions which were personal in nature do not attract provisions of secs.269SS and 269T of the Act.

8. The CIT(A) after considering the above submissions agreed with the submissions and cancelled penalties imposed on the assessee u/s 271D and 271E of the Act observing as follows:

"The appellant is nephew of Dr. P.Dayananda Pal, after the death of his father this family transaction is between the two. Dr. P.Dayananda Pai has confirmed the transactions, stating that "I would also Like to mention that with respect to Para A reasons mentioned above, it is nothing but the monies received back from Sri Sanjay Shenoy which was given by me earlier, as explained to your good self in Point number 3,4, 5 supra above.

These monies were give to him to purchase flat for his personal use as a maternal uncle to support him in his initial years of Life tl settle down after the demise of his father (i.e., my brother-in-Law - own sister's husband)"

"I can also come personally and give statement in support of the confirmation letter given by me now. The transactions mentioned above are purely my personal transactions and it is not a loan or business transaction at any point of time and the source for giving these moneies are drawings from my firm as a Managing Partner of Canara Housing Development Company."

12. Considering these are personal transaction between uncle and nephew and relying upon the decision referred to above, the penalty levied for the assessment years 2006-07 to 2008-09 is hereby deleted."

9. Aggrieved by the order of the CIT(A), the Revenue is in appeal before this Tribunal.

10. The appeal bearing ITA Nos.1220 and 1222/Bang/2016 were filed on 10/6/2016 and were within the time. In that appeal, the assessee had challenged the imposition of penalty u/s 271E and 271D of the Act . The two appeals in ITA Nos.1220 and 1222/Bang/2016 were treated as appeals challenging levy of penalty u/s 271D of the Act and the Department was directed to file separate appeals insofar as challenge to the imposition of penalty u/s 271E of the Act.

11. Pursuant to the aforesaid directions, the Revenue's plea in ITA Nos.2355 and 2356/Bang/2018 that there is a delay of 590 days in filing these 2 appeals. The reason for delay has been explained in an Affidavit filed on behalf of the Revenue by citing the following reasons in filing the appeals.

"I, Shri Deepak G. , S/o Shri K Gopalaswamy , Major (28 Yrs.) presently at 4th Floor, BMTC Building, 6th Block, Koramangala, Bengaluru - 560 095 do hereby solemnly affirm and state on oath as follows:

1. I am working in Income Tax Department in aforementioned post. I am authorized to swear to this affidavit on behalf of the appellants. I am fully conversant with the facts of the case.

2. It is submitted that the impugned order passed by the Ld. CIT(Appeal)-1 was received by the Appellant's office viz, Commissioner of Income Tax, Bangalore on 02.05.2016 and the same was forwarded to the concerned assessing authority for scrutiny. The said officer after receiving the same prepared the scrutiny report and forwarded the same to the jurisdictional Pr. Commissioner of Income Tax for approval for filing of the above appeal as the judgement passed by the Ld. CIT(Appeal)-1 was fit for filing an appeal before the Hon'ble ITAT. On approval from the Pr. Commissioner of Income Tax, the case papers were sent to Standing Counsel officer for filing above appeal. However, separate appeal papers were not filed for individual assessment years. In lieu of the direction from honourable ITAT, separate papers for individual

assessment years are being filed now. In the aforesaid process, there is delay in filing the above appeal. The same is bonafide as the same was due to delay in correspondence and due to the aforesaid process. Hence, the appellants prays this Hon'ble Court to condone the delay in filing of the aforesaid appeal and if the same is not entertained, the appellant would be put to great hardship and on the other side no hardship would be caused to the other side. WHEREFORE, the appellant prays this Hon'ble Court be pleased to condone the delay in filing the above appeal in the interest of justice and equity. “

12. We have heard the submissions of the Id.DR on the application for condonation of delay and are satisfied that the delay in filing the appeals is owing to reasonable cause and is purely technical. Hence, the same is condoned. As per the merits of the appeals filed by the Revenue is concerned, the principal contention of the department is that the assessee was also in the business of real estate and his uncle Dr. P Dayananda Pai was also in the business of real estate. It is the stand of the department that these were purely business transactions and not personal transactions as pleaded by the assessee. It was submitted that the CIT(A) erred in accepting the plea of the assessee that the transaction in question is purely personal in nature, which does not attract secs. 269SS and sec. 269T of the Act.

13. The Id.Counsel for the assessee on the other hand brought to our notice, the observations of the AO in the order of asst. passed by the AO in relation to asst. year 2006-07 in the order dated 28/3/2013 has observed as follows :-

“ I have considered the submissions made by the authorized representative explaining the nature and source of the assessee's

cash transactions with Shri. Dayananda Pai. It is mainly stated that the payments and receipts by way of cash are purely on account of personal transaction. However, it is worthwhile to note that Shri. Dayananda Pai has stated that the payments were made by him out of his Imprest Account in Canara Housing Development Company. The name and style of the "Imprest Account" is explained as "Dayananda Pai P. Current A/c" for the period from 01/04/2005 to 31/03/2007 totalling to Rs.1,70,00,000/- & "Miscellaneous Properly Advances Partners Imprest" for the period from 01/04/2007 to 31/03/2008 totalling to Rs:18,00,00,000/-. It is further stated that all the amounts and Heads of Accounts mentioned above are from Finalized Audited Accounts for the respective year of Canara Housing Development Company. In effect, it is stated that the transactions of cash payments and cash receipts between Shri. Dayananda Pai and the assessee Shri. Sanjay Shenoy are accounted for in the books of accounts relating to business, - maintained by the business entity of which Shri Dayananda Pai is the Managing Partner. In the circumstances, it is clear that the cash payments and cash receipts by Shri. Dayananda Pai to the assessee Shri. Sanjay Shenoy are not actually personal transactions and the said transactions partake the character of loans accepted for business purposes and loans repaid, more so because the nature of business of the assessee Shri. Sanjay Shenoy is "Property Development & Real Estate", which is the same as that of Shri. Dayananda Pai. The act of taking money from a person and later giving it back to the very same person is an act of acceptance of loan and repayment of loan, the mode of which in this case, is by way of cash. It is only that the said transactions are being colored as 'Personal Transactions' and named as monies given and monies taken, owing to the fact that there exists a personal relationship of Uncle and Nephew between Shri. Dayananda Pai and the assessee, Shri. Sanjay Shenoy. in view of the above findings, the cash transactions between the assessee Shri Sanjay Shenoy and Shri Dayananda Pai are treated as loans received and loans repaid."

14. He pointed out that the source of cash of Dr. P Dayananda Pai was from the imprest account of a firm in which, he was a Managing Partner

and that by itself cannot be conclusive to hold that the cash payments were in the nature of business transactions and it was not personal in nature. He brought to our notice that Dr. P Dayananda Pai in a letter dated 21/2/2013 addressed to the AO wherein, he has narrated the entire sequence of the events as affirmed that monies were given by him to his nephew to enable him to purchase a flat for his personal use as a maternal uncle to support him in his initial years of life to settle down after the demise of his father i.e Dr. P Dayananda Pai own sister's husband. He also brought to our notice that in the aforesaid letter Dr. P Dayananda Pai has confirmed that the transaction were purely personal transaction and it is not a loan or business transaction at any point of time and the source for giving these monies were drawings from the firm in which he was Managing Partner. It was submitted by him that in the light of the evidence that the loan in question was purely a personal loan between an uncle and nephew, the provisions of sec. 269AA and 269T of the Act does not attract. In support of the proposition that receipts and repayments of monies between close relatives for personal purposes will not attract the provisions of sec.269SS and Sec.269T of the Act. The Id.Counsel for the assessee placed reliance on several decisions and in particular placed reliance on the decision of ITAT Kolkatta Bench in the case of Jagmohan Sharma Vs. JCIT in ITA Nos.552 &553/Kol/2015 dated 10/1/2018. He pointed out that in the aforesaid decision, payment and repayment of monies between niece, uncle and aunt were held to be outside the purview of provisions of sec.269SS and 269T of the Act. The following observations of the Tribunal were brought to our notice.

“8. We have given a careful consideration to the rival submissions and perused the material available on record, we note that

Coordinate Bench of the Kolkata Tribunal in the case of Sri Mansur Ali Laskar in ITA No.1094/Kol/2011 for A.Y 2007-08 dated 30.12.2011 (supra) wherein the Bench has considered, Niece, Uncle, Aunty, Wife of brother, Wife's Sister and Cousin sister as a part of family members. In the assessee's case under consideration the transaction with sister-in-law and Nephew should also be considered as a part of family members. There is no difference between Wife's sister and Sister-in-law and if Niece is part of family member then Nephew should also be part of family member.

We note that Judgment of the Coordinate Bench in the case of Sri Mansur Ali Laskar has been duly approved by the Hon'ble Kolkata High court in ITAT No.111 of 2012 GA No.1498 of 2012. Therefore, the definition of relatives include husband, wife, brother, sister, sister-in-law, Niece and Nephew etc. as per the list given in para 6 of this judgment. The transactions between these family members are neither loans nor deposit and purely a family system and purely a family requirement to help each other in the needy hours, for example medical help, education help and expenses to run the family. That is, one member of the family helps to other member in ti

needy hours, such as during medical treatment, education, marriage some other family needs. Therefore, respectfully following the judgment of the Coordinate Bench, we are of the view that transaction between Sister-in-law and Nephew(family members) did not fall in the definition of loan. Therefore, penalty for accepting loan and repaying loan u/s 271D and 271E should not be levied. Therefore, we quash the penalty u/s 271D and 271E for the AN 2005-06 in ITA No.552/Kol/2015 and in ITA No.553/Kol/2015."

15. It was submitted that in the light of the aforesaid decisions and in the light of the factual position that the loans in question were personal in nature, the penalty imposed was rightly cancelled by the CIT(A).

16. We have given a careful consideration of the rival submissions. The material in record clearly goes to show that the assessee as well as Dr. P Dayananda Pai who were admittedly nephew and uncle and confirmed that

the loans were personal loans to enable the assessee to purchase a flat. The source of cash has also been explained by Dr. P Dayananda Pai in his letter addressed to the AO dated 21/2/2013. The facts as asserted by the assessee and supported by Dr. P Dayananda Pai have not been controverted with any material by the Revenue. In the circumstance, we concur with the view of the CIT(A) that the moneys in question were received and repaid for personal transaction and there is no material to come to the conclusion that these were in relation to any business transactions. The decision relied on by the Id.Counsel for the assessee before us and several other decisions clearly supports the proposition that acceptance and repayment of cash for personal purpose between near relatives do not attract the provisions of sec.269AA and 269T of the Act.

17. In the case of CIT Vs. Smt. M Yesodha, 351 ITR 265, an amount received by assessee from her father-in-law was held to be outside the ambit of sec. 269SS of the Act. In the case of Ms. Nanda Kumari Vs. ITO, Tax case appeal No.968 of 2018 and judgment dated 20/12/2018 wherein, the Hon'ble Madras High Court held that receipt of cash by the daughter-in-law from father-in-law does not attract the provisions of sec. 269SS of the Act. Similarly, the Hon'ble Kolkatta High Court in ITA No.111 of 2012, GA No.1498 of 2012 approved the view of the ITAT Kolkata Bench in the case of Shri Mansur Ali Laskar in ITA No.1094/Kol/2011 dated 30/12/2011 wherein, it was held that niece, uncle, aunty, wife of brother, wife's sister and cousin are part of family members and the transactions with sister-in-law and nephew should also to be considered as a transaction between family members. In the light of the aforesaid decisions, we are of the view

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that the CIT(A) was justified in canceling the penalty imposed by the AO.
Consequently, all these appeals are dismissed.

18. In the result, the appeals by the Revenue are dismissed.
Pronounced in the open court on the date mentioned on the caption page.

(B.R BASKARAN)
ACCOUNTANT MEMBER

(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 27.10.2021.
Vms

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.