

आयकर अपीलीय अधिकरण "जे" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष।

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA NO 5391/Mum/2013
Assessment year: - 2009-10

Jayantilal Vaishnav HUF Jayco Industrial Estate House Wester Express Highway Kashi Mira, Next to Divya Palace Hotel, Kashi Mira, Dist: Thane - 401104.	v.	JCIT 25(1) Pratyaksha Kar Bhavan, Bandra Kurla Complex Mumbai - 400 051.
PAN/GIR No. AADCR8861N		
Assessee		Respondent

निर्धारित कि ओर से /Assessee By	Shri Lalit Munoyat
राजस्व कि ओर से /Revenue By	Shri Naveen Gupta

सुनवाई कि तारीख /Date of hearing	03.09.2015
घोषणा कि तारीख/ Date of pronouncement	16.10.2015

ORDER

PER RAJESH KUMAR, AM:

This appeal by the assessee is directed against the order dated 02.05.2013 of Commissioner of Income Tax (Appeals)-35, Mumbai (Hereinafter called as "the CIT(A)) for assessment year 2009-10. The assessee has raised following ground of appeal:

“1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the levying the penalty of Rs. 13,72,233/- by illogically coming to the conclusion that the appellant's explanation is not supported by any documentary evidence as all documents required were duly submitted.

2. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in concluding that all case laws relied upon by the appellant are not applicable to the present facts of the case without assigning any reasons.

3. On the facts and in the circumstances of the case and in law the CIT (A) erred in not considering the fact that there existed reasonable grounds for violations of provisions of section 269 TT of the Act as provided in section 273 B of the Act.

4. On the facts and in the circumstances of the case and in law the CIT (A) erred in not considering the fact that entire cash used to repay loans was withdrawn from regular bank accounts and duly recorded in Books of Accounts.”

2. The common issue raised in all the grounds of appeal relates to confirmation of penalty of Rs. 13,72,233/-u/s 271E by CIT(A).

3. Facts in brief are that the assessee is engaged in the business of manufacturing of chemical. There were some loans which were coming over from earlier years and were repaid during the year in cash amounting to Rs. 13,72,233/- because the assessee was under financial problems and loan creditors refused to accept payment by cheque.

4. The AO imposed penalty of Rs. 13,72,233/- after initiating the penalty proceedings u/s 271E of the Act for contravention of section 269T by rejecting the plea of assessee without doubting the genuineness of these loans.

5. The CIT(A) also upheld the order of AO by dismissing the appeal of assessee that the reasons as put forth by the assessee did not constitute reasonable cause within the meaning of section 273B of the Act which were incorporation in para 7.2 of the appeal order.

6. The Ld. AR submitted that the assessee was in severe financial crunch and the credibility of the assessee has gone down substantially. He filed before us the financial statement which is placed in the paper book stating therein that 381 cheques were dishonoured by the bank. No creditor was willing to accept payment by cheques. The financial problem was following by setting up of a manufacturing unit for drug & chemical. The Ld. Counsel cited various decisions in support of his contention. The Ld. Counsel drew our attention to death certificates of two loan creditors namely Late Shri Pritam Pandey and Late Shri Nishit Shah placed at page no. 18 and 19 respectively of the paper book which alone accounted for Rs. 12,83,174/- whose legal heirs pressed hard for cash payments and even went to the extent of gherowing the business premises of the assessee. The Ld. Counsel also submitted that the repayments were made out of the withdrawals from the bank accounts of the assessee and the AO did not dispute the genuineness of these transactions. The Ld. AR prayed for reversing the order of CIT (A) as the facts and circumstances under which the repayments were made in cash constitute reasonable cause within the meaning of section 273B.

7. The Ld. DR on the other hand, relied upon the orders of authorities below.

8. We have considered the rival submissions and carefully perused the relevant material on record. We find that the assessee had made repayments in cash for which assessee had given explanation and reasons for such repayments, which in our opinion falls within the realm of "Reasonable Cause" as stipulated u/s 273B of the Act which provides that where the assessee proves that there existed a reasonable cause for making payments in cash then the penal provisions may not be invoked. Such a reasonable cause can be gauged from the fact that assessee went into financial problems following the setting up of a manufacturing unit for drug & chemical. This is very much clear from the fact that during the year 381 cheques issued by the assessee were dishonoured by the bank, the details of which are placed at page 20 of the paper book. We also note that the substantial payments were made to the legal heirs of Late Mr. Pritam Pandey and Late Mr. Nitish Shah to the extent of Rs. 12,83,174/- who had expired and their legal heirs refused to accept

payments by cheques and compelled the assessee to make payments in cash . We also note that the genuineness of these payments were also not disputed by the authorities below. In the case of Suresh R. Solanki Vs. ACIT 2014(4)TMI 557-ITAT Mumbai, it has been held by the Tribunal that where urgency of making payment is shown, the penalty is not leviable. The Hon'ble Supreme Court in the case of ADIT Vs. Kumari A.R. Shanti (2008) 255 ITR 258 (SC), it has been held that the main object of section 269SS of the Act was to curb the menace of false entries in the books and where the transactions are genuine, the provisions of section 269SS and 269TT are not attracted. The reasonable cause as seen from the context of the situation where a person is reasonably and under bonafide belief of taking a action beyond his control i.e. cause which prevent a reasonable person in ordinary prudence acting under normal circumstances for taking such action. The reasonable cause has to be seen in the judicious manner by stepping up in the shoes such person as to what were the circumstances under which he acted upon. In view of the above facts we note that there exists reasonable and sufficient cause within the meaning of section 273B of the Act and order of CIT(A) cannot be sustained and the same is hereby reversed.

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

Order pronounced in the open court on this 16th day of October 2015.

Sd/-
(Amit Shukla)
(Judicial Member)

Sd/-
(Rajesh Kumar)
(Accountant Member)

Mumbai dated 16-10-2015
SKS Sr. P.S

Copy to:

~~The Appellant~~

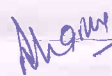
The Respondent

The concerned CIT (A) 44

The concerned CIT XXXII

The DR, "J" Bench, ITAT, Mumbai

By Order



Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI

