

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B' KOLKATA

**[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER &
SHRI A.T. VARKEY, HON'BLE JUDICIAL MEMBER]**

[THROUGH VIRTUAL COURT]

I.T.A. No. 2264/Kol/2019
Assessment Year: 2013-14

Shri Ram Roop Singh.....Appellant
B1/15, A.K. Bithi, City Centre,
Durgapur, Burdwan - 713 204.
[PAN: ATXPS 6255 M]

VS.

ACIT, Range - 45, KolkataRespondent
Kolkata.

Appearances by:

None appearing on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : November 17th, 2020

Date of pronouncing the order January 6th, 2021

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-6, Kolkata dated 14.03.2019 passed u/s 250 of the Income Tax Act, 1961 (the 'Act ') relating to A.Y. 2013-14, wherein he confirmed the penalty of Rs. 6,54,118/- levied by the Assessing Officer on the assessee u/s 271E of the Income Tax Act, 1961.

2. None appeared on behalf of the assessee, nor was a petition for adjournment filed. Under the circumstances, we disposed off the case ex-parte on merits qua the assessee, after hearing the ld. departmental representative.

3. There is delay of 41 days in filing of the appeal. After perusing the petition for condonation of delay, we are convinced that the assessee was

prevented from reasonable cause for filing of the appeal in time. Hence we condone the delay and admit the appeal.

4. On merits, we find, penalty u/s 271E of the Act was levied on the assessee as the Assessing Officer was of the view that the assessee had paid four installments of Rs. 1,32,000/- each on 16.05.2012, 16.06.2012, 16.07.2012 and 16.08.2012 respectively in cash, towards the re-payment of finance taken by him from M/s. Sundaram Finance Ltd. for the purchase of lorry. Further the AO find that the assessee had paid in cash an amount of Rs. 1,26,118/- to M/s. L & T Finance Ltd. on 13.07.2012 towards repayment of finance obtain by him for purchase of trucks. The assessee explain the urgency for the payment and also submitted that the transactions will genuine. The payment was made in cash on due dates to avoid the default in repayment of loan, which would effect assessee's credibility in CIBIL and to avoid penalty for default, as on that date of such payments, signed cheque books were not available with the staff. M/s. Suyndaram Finance Ltd confirming these facts situation and this letter was submitted before the revenue authorities.

5. As far as repayment of cash of L&T Finance Ltd., is concerned and it was submitted that the account had to be closed immediately, so as to clear the finance, obtain a NOC so as to sell a lorry. The AO rejected this explanation and levied penalty. The Ld. CIT(A) agreed with the view of the Assessing Officer.

6. In our view, the penalty in this case has to be deleted, the assessee was prevented by the reasonable cause in making the repayment of finances otherwise than by way of cheque. Even otherwise the transactions are

genuine. Both the Assessing Officer as well as the Ld. CIT(A) have not doubted the genuineness of the transactions. It is also not clear whether the finance obtained is, a lease finance or hire purchase finance. The assessee has explained the urgency leading to payment of instalment in cash. The lender have confirmed this fact. It is a fact that CBIL ratings are efficiently resulting in effect on business.

7. When the transactions were genuine, then the violation of question is only a technical and venial. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs State of Orissa reported in (1972) 083 ITR 0026 (SC) (supra) held that no penalty can be levied when the violation is technical and venial.

8. Applying for proposition laid down by the Hon'ble Supreme Court in that case to the facts of this case and as the assessee had a reasonable cause to violation of the law, we are of the considered opinion that the penalty in question is to be deleted. Hence we cancel the same.

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

Order Pronounced in the Open Court on January 6th, 2021.

Sd/-

(A.T. Varkey)
JUDICIAL MEMBER

Sd/-

(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 06/01/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Ram Roop Singh, B1/15, A.K. Bithi, City Centre, Durgapur, Burdwan
– 713 204.
2. ACIT, Range – 45, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata