

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 810 & 811/JP/2016
निर्धारण वर्ष/Assessment Year : 2005-06

M/s. Narayanji Spices & Pulses (P) Ltd. 1990, Ramlala Ji Ka Rasta, Johri Bazar, Jaipur	बनाम Vs.	The JCIT Central Range Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCN 2140E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT - DR
निर्धारिती की ओर से / Assessee by: Shri S.K. Gogra, CA and
Shri S.S. Gogra, Advocate

सुनवाई की तारीख / Date of Hearing : 12/01/2017
घोषणा की तारीख / Date of Pronouncement : 16 /01/2017

आदेश / ORDER

PER BHAGCHAND, AM

Both these appeals have been filed by the assessee against different orders of the Id. CIT(A)- 4, Jaipur dated 03-06-2016 for the assessment year 2005-06 regarding imposing the penalty of Rs. 55,000/- u/s 271D and & Rs. 2,36,507/- u/s 271E of the Act respectively.

2.1 Apropos assessee's solitary ground for imposition of penalty u/s 271D of the Act in ITA No. 810/JP/2016, the facts as emerges from the order of the ld. CIT(A) is as under:-

“3.3 I have duly considered assessee's submission and also carefully gone through assessment order and penalty order passed u/s 271D of the Act for the A.Y. 2005-06. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. On perusal of submission, it is seen that Smt. Ruchi Meena, Director during the financial year under appeal had paid a sum of Rs. 55,000/- in cash to the assessee. In this regard, assessee has contended that the transactions pertaining to sum of Rs. 55,000/- is in the nature of “current account on urgent basis to meet business liability”. Explanation given in this regard does not same to be bona fide as assessee has failed to explain exact nature of ‘urgent business requirement’. It is submitted that a/c maintained by assessee is a composite a/c which contains details of entries in cheque (specially for salary transaction & loan transactions) and cash transactions but even after repeated request, no such ledger a/c or cash book of company. Therefore, in view of facts and circumstances of the case, which assessee has failed to justify its contention, penalty levied of Rs. 55,000/- u/s 271D of the Act is hereby justified. Assessee’s appeal fails in Gr. No. 1.

4. In the result, the appeal stands dismissed for A.Y.2005-06.”

2.2 During the course of hearing, the ld. AR of the submitted that the assessee company had received the following funds in form of contribution from its director Smt. Ruchi Meena in its regular course of business.

S.N.	Name of Director	Date	Amount taken	Nature of funds
1.	Smt. Ruchi Meena	9-03-2005	15,000/-	Funds from director in current account transaction
2.	Smt. Ruchi Meena	18-03-2005	20,000/-	- do-
3.	Smt. Ruchi Meena	22-03-2005	20,000/-	-do-
	Total		55,000/-	

The ld. AR of the assessee further contended that the funds taken by the assessee from its Director in its regular course of business from current account maintained by the assessee company in its books of account. These funds are received to meet urgent needs of company time to time which are in form of contribution instead of deposit. The ld. AR further submitted that transactions are in between a closely held company and its directors implying that one individual managing the affairs of the two concerns and the transactions do not partake the nature of deposit. One single person Shri Ramswaroop Meens is managing entire business affairs of the group companies and the decision of to transfer the funds from one concern to another or to repay the funds could have been said to have been largely influenced by the same individual, it cannot be said that

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transaction partake the nature of either deposit or loan. The ld. AR of the assessee filed the copy of affidavit dated 21-11-2011 of Shri Ramswaroop Meena with regard to the contention that one person was managing the entire business affairs of entire group. The entire transaction is undertaken with bona fide intention. It is further submitted that no ingenuity is brought in the assessment order. The return income is accepted. It is further submitted that there is no case against assessee that these transactions had anything to do with evasion of tax or concealment of income. The copy of confirmation of accounts were submitted to the lower authorities but the ld. CIT(A) confirmed the imposition of penalty u/s 271D of the Act. The ld. AR of the assessee relied on following case laws to this effect.

1. Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) Tax Publisher (DT) 733 – Hyderabad Tribunal. – Held that “the active director of the assessee company is clearly not covered by the expression “any other person” occurring in Section 269SS of the Act. Further held that “mere technical breach of provisions, while transactions were held to be genuine do not attract provisions of Section 269SS, therefore, where one of the directors of assessee company brought funds from his personal account whenever assessee was in requirement of funds whether transactions between assessee and director of assessee do not fall within mischief sought to be remedied by the Section as there is no case against assessee that these transactions had anything to do with evasion of tax or concealment of income.”

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2. CIT vs. Idhayan Publication Ltd. (2006) Tax Publisher (DT) 1251-Madras High Court – Held that : Amount received by a private company from its Director neither loan nor deposit – since the transaction did not fall within the meaning of loan or advance there was no violation of Section 269SS.

3. CIT vs. Ajana Dyeing & Printing Mills (2003) 264 ITR 505 (Raj) – Held that while levying penalty u/s 271D for violation of provisions of Section 269SS adjustment of Rs. 20,000/- is to be allowed which is permissible u/s 269SS.

4. Sudha Agro & Chemical Industries vs. Addl. CIT (2016) – Tax Publisher (DT) 2783 –(Vishakhapatnam Tribunal) – Held that “after taking into consideration of judgement of Raj. High Court in case of Ajanta Dying & Printing Mills held that “penalty shall be levied after excluding Rs. 20,000/- in each case as permissible u/s 269SS of the Act.

2.3 During the course of hearing, the ld. DR relied on the orders of lower authorities.

2.4 I have heard the rival contentions and perused the materials available on record. It is noted from the available records that the assessee had received funds in cash from its director Smt. Ruchi Meena amounting to Rs. 55,000/- for the assessment year 2005-06 for meeting out the urgent business needs of the assessee company for which the assessee had submitted the confirmation of accounts to the lower authorities. It is noted that the return of income filed by the assessee is accepted and there was no case against the assessee that these transactions

M/s. Naryanji Spices and Pulses (P) Ltd. vs. JCIT, Central Range, Jaipur had anything to do with evasion of tax or concealment of income. It may be noted that 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. It is further noted that on similar type of issue the ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT vide its order dated 13-06-2014 in ITA No. 847/JP/2011 for the assessment year 2006-07 had deleted the penalty u/s 271D of the Act by observing as under:-

“4.0 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 labourers 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 Hon'ble Jurisdictional High Court in the case of CIT vs. Raj Kumar Sharma (supra) and the judgement of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Saini Medical Store (supra) which is followed by Hon'ble P & H High Court in the case of CIT vs. Sunil Kumar Goel (supra). Thus in view of the facts and circumstances of the case and the decisions relied on above, the penalty is deleted.

Respectfully following the decision of ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT (supra) and also in view of

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the following case laws as relied upon by the ld. AR of the assessee

namely :-

1. Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) Tax Publisher (DT) 733 – Hyderabad Tribunal. –
2. CIT vs. Idhayan Publication Ltd. (2006) Tax Publisher (DT) 1251-Madras High Court
3. CIT vs. Ajana Dyeing & Printing Mills (2003) 264 ITR 505 (Raj)
4. Sudha Agro & Chemical Industries vs. Addl. CIT (2016) – Tax Publisher (DT) 2783 –(Vishakhapatnam Tribunal)

I direct to delete the penalty of Rs. 55,000/- u/s 271D of the Act sustained by the ld. CIT(A) in assessee's case for the assessment year under consideration. Thus the appeal of the assessee is allowed

3.1 Apropos assessee's solitary ground for imposition of penalty u/s 271E of the Act in ITA No. 811/JP/2016, the facts as emerges from the order of the ld. CIT(A) is as under:-

“3.1.2. I have duly considered assessee's submission and carefully gone through the assessment order and penalty order passed u/s 271E of the Act. On perusal of submission, it is seen that assessee had paid in cash to Smt. Manfooli Devi Rs. 40,100/- and Smt. Bhonri Devi Rs. 1,96,402/- on different occasions. During the appellate proceedings, it is submitted that directors namely Smt. Manfooli Devi and Smt. Bhonri Devi are working in the company on labour work basis and the amount was credited to her a/c and the balance standing are out of accumulated fund in respect of labour work charges paid by the company.

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The explanation given does not seem to be justified. Even AR was asked to further elaborate contribution of Smt. Manfooli Devi and Smt. Bhonri Devi as workers but no further details have been provided till date. Even after repeated request, assessee has not filed copy of ledger a/c which shown that amount accumulated in the a/c represent remuneration payable to the director.

In view of these facts and circumstances, assessee's contention with regard to payment in cash to Smt. Manfooli Devi and Smt. Bhonri Devi is without any basis, accordingly penalty levied u/s 271E of the Act is sustained. Assessee's appeal fails in Gr. No.1.

4. In the result, the appeal stands dismissed for A.Y. 2005-06.”

3.2 During the course of hearing, the ld. AR of the assessee submitted that the assessee company had paid following funds to its directors in its regular course of business.

S.N.	Name of Director	Date	Amount taken	Nature of funds
1.	Smt. Manfooli Devi	17-01-2005	5,100	Funds given to director account transaction for Director's remuneration
2.	Smt. Manfooli Devi	18-01-2005	20,000	- do-
3.	Smt. Manfooli Devi	19-01-2005	15,000	-do-
4.	Smt. Bhonri Devi	30-09-2004	6,000	-do-
5.	Smt. Bhonri Devi	1-10-2004	20,000	-do-
6.	Smt. Bhonri Devi	18-01-2005	20,000	-do-
7.	Smt. Bhonri Devi	19-01-2005	20,000	-do-
8.	Smt. Bhonri Devi	28-02-2005	20,000	-do-
9.	Smt. Bhonri Devi	5-03-2005	20,000	-do-
10.	Smt. Bhonri Devi	9-3-2005	20,000	-do-
11.	Smt. Bhonri Devi	18-03-2005	15,000	-do-

12.	Smt. Bhonri Devi	18-03-2005	20,000	-do-
13.	Smt. Bhonri Devi	22-03-2005	14,000	-do-
14.	Smt. Bhonri Devi	23-03-2005	15,000	-do-
15.	Smt. Bhonri Devi	30-03-2005	4,507	-do-
	Total		2,36,507	

The Id. AR of the assessee further contended that the funds paid by the assessee company to its Directors in its regular course of business from current account maintained by the company in its books of account for payment of accumulated fund which was out of Director's remuneration as referred in page 3 of AO's order at top para. The copy of confirmations of accounts were submitted before the lower authorities and the Id. CIT(A) erred in confirming the penalty of Rs. 2,36 507/- in the hands of the assessee company u/s 271E of the Act. The Id. AR further contended that the term "any other person" does not denote director of company. In this case since the payment was made to Director of assessee company, the provisions of Section 269T does not apply. The Id. AR further submitted that the transactions are in between a closely held company and its directors implying that one individual managing the affairs of two concerns and the transactions do not partake the nature of deposit or loan. The Id. AR further submitted that one single person Shri Ramswaroop Meena is managing entire business affairs of the group companies and the decision to transfer the funds from one concern to another or to repay the

M/s. Naryanji Spices and Pulses (P) Ltd. vs. JCIT, Central Range, Jaipur funds could have been said to have been largely influenced by the same individual, it cannot be said that the transaction partake the nature of either deposit or loan. The ld. AR of the assessee filed the copy of affidavit of Shri Ramswaroop Meena dated 21-11-2011 with regard to contention that one person was managing the entire business affairs of entire group. The ld. AR further submitted that entire transaction is undertaken with bona fide intention and no ingenuity is brought in the assessment order for the above year. The return income is accepted. The ld. AR further submitted that there is no case against the assessee and these transactions had anything to do with evasion of tax or concealment of income. The copy of confirmation of accounts were submitted to the lower authorities but the ld. CIT(A) confirmed the imposition of penalty u/s 271E of the Act. The ld. AR of the assessee relied on following case laws to this effect with the prayer to delete the penalty imposed u/s 271E of the Act.

1. M/s. Shreepati Developer & Builder Ltd. vs. Addl. CIT (2015) 65 (II) ITCL page 423 (Mumbai Trib) – Held that the genuineness of the transaction was not disputed. No malafide act was attributed to the transactions. Revenue had not suffered any loss and there was no attempt of any money laundering or evasion of tax and concealment of income. The findings given by the Coordinate Bench of Mumbai Tribunal in case of Lodha Builders (P) Ltd., 163 TTJ 778 were squarely applicable on this issue also. Respectfully following

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the same, the penalty levied u/s 271E in this case was also ordered to be deleted.

2. Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) Tax Publisher (DT) 733 – Hyderabad Tribunal. – Held that “the active director of the assessee company is clearly not covered by the expression “any other person” occurring in Section 269SS of the Act. Further held that “mere technical breach of provisions, while transactions were held to be genuine do not attract provisions of Section 269SS, therefore, where one of the directors of assessee company brought funds from his personal account whenever assessee was in requirement of funds whether transactions between assessee and director of assessee do not fall within mischief sought to be remedied by the Section as there is no case against assessee that these transactions had anything to do with evasion of tax or concealment of income.”

3. CIT vs. Idhayan Publication Ltd. (2006) Tax Publisher (DT) 1251-Madras High Court – Held that : Amount received by a private company from its Director neither loan nor deposit – since the transaction did not fall within the meaning of loan or advance there was no violation of Section 269SS.

4. S. Vasundhara Devi vs. JCIT (2015) 66 (II) ITCL – page 578 (Chennai Tribunal) – Held that transactions between family members were genuine and bona fide transactions. The source of money had already been disclosed in the return of HUF. Further, it was not the case of Revenue that assessee had introduced unaccounted money in the books of account as the very purpose of bringing in the provisions of Section 269SS and 269T was to curb the practice of introducing black money into books of account. The assessee had no intention to evade tax and did not make any attempt to make any liability. The individual had accepted loans from HUF for purchase of property in their individual names and had reasonable cause for accepting such loans. Therefore, the order of the Id. CIT(A) sustaining the penalty levied by AO was not justified and same was set

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aside. Followed principle laid down in case of CIT
vs. M Yesodha,(Madras High Court 351 ITR 265).

5. CIT vs. Ajana Dyeing & Printing Mills (2003) 264 ITR 505 (Raj) – Held that while levying penalty u/s 271D for violation of provisions of Section 269SS adjustment of Rs. 20,000/- is to be allowed which is permissible u/s 269SS.

6. Sudha Agro & Chemical Industries vs. Addl. CIT (2016) – Tax Publisher (DT) 2783 –(Vishakhapatnam Tribunal) – Held that “after taking into consideration of judgement of Raj. High Court in case of Ajanta Dying & Printing Mills held that “penalty shall be levied after excluding Rs. 20,000/- in each case as permissible u/s 269SS of the Act.

3.3 During the course of hearing, the ld. DR relied on the orders of lower authorities.

3.4 I have heard the rival contentions and perused the materials available on record. It is noted from the available records that the assessee company had paid funds to the tune of Rs. 2,36,507/- to its directors as mentioned above in its regular course of business from its current account maintained by the company in its books of account for payment of accumulated fund which was out of director’s remuneration. It is noted that the return of income filed by the assessee is accepted and there was no case against the assessee that these transactions had anything to do with evasion of tax or concealment of income. It is also noted from the

M/s. Naryanji Spices and Pulses (P) Ltd. vs. JCIT, Central Range, Jaipur records that entire transaction is undertaken with bona fide intention. It is also noted that on similar type of issue the ITAT (SMC) Jaipur Bench in the case of Lallu Ram Saini vs. ITO (ITA No. 676/JP/2015 for the assessment year 2008-09 vide order dated 21-10-2016) had deleted the penalty u/s 271E of the Act by observing as under:-

“2.5 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee had made repayments of loans of Rs. 4,59,560/- i.e. Rs. 3,28,260/- to M/s. Magma Shrachi Finance Ltd. and Rs. 1,31,330/- to M/s. Shri Ram Stone Cutting Industries for which the Addl. CIT observed that it is a violation of provisions of Section 269T of the Act and thus he imposed a penalty of Rs. 4,59,560/- In first appeal, the Id. CIT(A) confirmed the penalty of Rs. 3,28,260/- only in the case of M/s. Magma Shrachi Finance Ltd. on account of transactions of payment by cash by the assessee. It is noted from the ledger account of the assessee (page 1 of the paper book of the assessee) that the assessee had raised a loan of Rs. 5.00 lacs from M/s. Magma Shrachi Finance Ltd. on 7-04-2007 and subsequently the assessee used to pay the instalments every month in cash to the representative of the finance company who issued the receipts for taking the cash payment from the parties. The submissions of the Id. AR of the assessee reveals that the payment could not be made by cheque as the finance company did not accept the outstation cheque. It is also noted that the assessee has filed the copies of the cash receipts issued by the representative of M/s. Magma Shrachi Finance Ltd. which is filed at pages 2 to 8 of the paper book. The assessee had submitted the bifurcation of the total amount of Rs. 3,28,260/- paid to M/s. Magma Shrachi Finance Ltd. which comprises of Rs. 41,418/- in respect of payment of interest and Rs. 2,86,842/- in respect of repayment of loan amount. During the course of hearing, the Id. AR of the assessee relied on the order of ITAT Gauhati Bench in the case of Addl.CIT vs. Smt. Prahati

M/s. Naryanji Spices and Pulses (P) Ltd. vs. JCIT, Central Range, Jaipur Baruah 133 Taxman 74 (Maz) wherein it is held that the introduction of section 269T and section 271E in the statute is to prevent proliferation of black / unaccounted money deposited with banks and other persons by introducing the system of repayment through account payee cheques and drafts and, thus, to ensure that the identity of the payee is established. Where the identity of the lender to whom repayment had been made was known to the department and the genuineness of the loan transaction was not in doubt, it could not be said that the breach of law, if any, was deliberate and the default, if any, could be said to be a technical default for which no penalty would be leviable. Hence, in view of the above deliberations and the case law cited (supra), I direct the AO to delete the penalty of Rs.3,28,260/- imposed u/s 271E of the Act. Thus the appeal of the assessee is allowed.’’

Respectfully following the decision of ITAT (SMC), Jaipur Bench in the case of Lallu Ram Saini vs. JCIT (supra) and also in view of the following case laws relied upon by the ld. AR of the assessee namely:-

1. M/s. Shreepati Developer & Builder Ltd. vs. Addl. CIT (2015) 65 (II) ITCL page 423 (Mumbai Trib)
2. Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) Tax Publisher (DT) 733 – Hyderabad Tribunal.
3. CIT vs. Idhayan Publication Ltd. (2006) Tax Publisher (DT) 1251-Madras High Court
4. S. Vasundhara Devi vs. JCIT (2015) 66 (II) ITCL – page 578 (Chennai Tribunal)
5. CIT vs. Ajana Dyeing & Printing Mills (2003) 264 ITR 505 (Raj)
6. Sudha Agro & Chemical Industries vs. Addl. CIT (2016) – Tax Publisher (DT) 2783

M/s. Naryanji Spices and Pulses (P) Ltd. vs. JCIT, Central Range, Jaipur
I direct to delete the penalty of Rs. 2,36,507/- u/s 271E of the Act
sustained by the Id. CIT(A) in assessee's case for the assessment year
2005-06. Thus the appeal of the assessee is allowed.

4.0 In the result, the both the appeals of the assessee are allowed.

Order pronounced in the open court on 16 /01/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16 /01/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Narayanji Spices & Pulses (P) Ltd.
Jaipur
2. प्रत्यर्थी / The Respondent- The JCIT, Central Range, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 810/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar