

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4880/Mum/2016
Assessment Year: 2012-13**

DCIT-CC-8(4)
6th floor, Room No. 658,
AayakarBhavan, M.K. Road,
Mumbai-400020.

Vs.

M/s Raj Doshi Exports Pvt
Ltd.
DaulatBhuvan, Gr. Floor,
407, Kalbadevi Road,
Mumbai-400002

PAN No. AAACR7411F

(Appellant)

(Respondent)

Revenue by : Shri Saurabh Kumar Rai, DR
Assessee by: Shri Shailesh Parmar, AR

Date of Hearing : 14/06/2017
Date of pronouncement: 08/09/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-50, Mumbai and arises out of the penalty order u/s 271D of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the Revenue reads as under:-

On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the penalty of Rs.55,00,000/- levied u/s 271D of the Income Tax Act, 1961 holding that the provision of section 269SS are not applicable without appreciating the facts that during the course of assessment proceedings as well as penalty proceedings, the assessee was given an opportunity but he failed to explain the notings on Hundies/promissory notes and no reasonable cause is explained for accepting loan by cash.

3. Briefly stated, the facts of the case are that a search and seizure action u/s 132 was carried out in the business premises of the assessee M/s Raj Doshi Exports Pvt. Ltd. on 26.05.2011. The Assessing Officer (AO) noted that during the course of search one loose paper file was seized (*Annexure A-1* to the panchnama). As per page No. 16 to 22 of this loose paper file, the assessee had accepted loans of Rs.55,00,000/- by Hundies during the FY 2011-12 relevant to the AY 2012-13. As the same was in contravention to provision of section 269SS, the Additional CIT, Central Range -10, Mumbai levied a penalty of Rs.55,00,000/- u/s 271D of the Act.

4. Aggrieved by the penalty order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) found that (i) the hundis were not filled up properly, therefore they have little evidentiary value, (ii) the hundis were found in the premises of the assessee, therefore, had any loan been actually given to the assessee, the creditor would have definitely insisted on the hundi being handed over to him (creditor) by the assessee and in

that case, the hundi could not have been found in the assessee's premises in the first place, (iii) the hundis were signed by Shri Haresh Mehta and though Shri Mehta happens to be a director of the assessee-company, there is nothing to presume that he had signed them on behalf of the assessee.

Therefore, the Ld. CIT(A) deleted the penalty of Rs.55,00,000/- levied by the AO u/s 271D of the Act.

5. Before us, the Ld. DR submits that as per page No. 16 to 22 of the loose paper file (*Annexure A-1* to the panchnama) the assessee-company had accepted loans of Rs.55,00,000/-by hundis in the impugned assessment year. As there has been contravention of section 269SS by the assessee, the Ld. DR submits that the AO has rightly levied the penalty of Rs.55,00,000/- u/s 271D.

6. *Per contra* the Ld. Counsel of the assessee relies on the order of the Ld. CIT(A). He drew our attention to para 5.5 of the appellate order dated 31.03.2016 passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. We find that the AO has made an addition of Rs.55,00,000/- to the income shown by the assessee. It has been mentioned at para 12 of the assessment order dated 30.03.2014 passed by the AO. In the case of *Diwan Enterprises vs. CIT* (2000) 246 ITR 571, 578-79 (Del), it has been held that 'the Assessing Officer cannot be permitted to treat the amount of loan as income for the purpose of assessing tax thereon while framing the assessment and at the same time

to treat it as a loan for the purpose of section 269SS r.w.s 271D and subject the transaction to penalty. Such proceedings would be self-contradictory’.

7.1 We also observe that there were infirmities in the hundis as pointed out by the Ld. CIT(A), delineated at para 4 here-in-above.

8. In view of the aforesaid reasons, we uphold the order of the Ld. CIT(A) and dismiss the appeal filed by the Revenue.

Order pronounced in the open Court on 08/09/2017.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Mumbai;

Dated: 08/09/2017

Rahul Sharma, Sr. P.S.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai