

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
(समक्ष)Before श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम. बालगनेश, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 849/Kol/2014
Assessment Year: 2010-11

M/s. D. K. Enterprise (PAN: AAGFD1152N)	Vs.	Joint Commissioner of Income-tax, Range-1, Burdwan
Appellant		Respondent

&

I.T.A. Nos. 1346 & 1347/Kol/2014
Assessment Year: 2010-11

Income-tax Officer, Wd-1(3), Burdwan	Vs.	M/s. D. K. Enterprise
Appellant		Respondent

Date of Hearing	25.05.2017
Date of Pronouncement	14.07.2017
For the Assessee	Shri Somnath Ghosh, Advocate
For the Revenue	Shri Saurabh Kumar, Addl. CIT, Sr. DR

ORDER

Per Bench:

The ITA No. 849/Kol/2014 filed by assessee is against the order of Ld. CIT(A), Asansol dated 07.04.2014 for AY 2010-11 in respect of upholding the action of JCIT, Range-1, Burdwan levying penalty to the extent of Rs.2,91,500 u/s. 271D of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). ITA Nos.1346 & 1347/Kol/2014 filed by the revenue are against the separate orders of Ld. CIT(A), Asansol dated 07.04.2014 for AY 2010-11 in respect of deleting the penalty u/s. 271D and 271E of the Act respectively. Since

all these appeals have been heard together and facts are common and inter-related, we dispose of all these appeals by this consolidated order for the sake of convenience.

2. ITA No. 849/Kol/2014 and ITA No. 1346/Kol/2014 are cross appeals filed by assessee and revenue respectively against the order of Ld. CIT(A) passed u/s. 271D of the Act. First we take up ITA No. 1346/Kol/2014 (Revenue appeal). The JCIT noted in his order passed u/s. 271D of the Act read with section 269SS of the Act that assessee which is a **Firm**, had taken loan aggregating to Rs.26,86,000/- (from Shri Sumanta Roy Rs.9,03,000/-, Smt. Mita Roy Rs.8,97,000/- and Shri Ujjal Kanti Konar Rs.8,86,000/-) in cash from 15.07.2009 to 14.12.2009 and repaid by cash from 06.01.2010 to 30.03.2010. According to the JCIT, the loans were taken by the assessee in cash and so it violated the provisions of section 269SS of the Act and, therefore, he levied penalty u/s. 271D of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the same taking note of the fact that Shri Sumanta Roy, Smt. Mita Roy and Shri Ujjal Kanti Konar were partners in assessee firm, which was evident from perusal of the copy of the partnership deed which was found in the assessment records by the Ld. CIT(A). The Ld. CIT(A) relying on the decision of the Coordinate Bench of this Tribunal in ITA No.1916/Kol/2004 and taking note of the decision of the Hon'ble Rajasthan High Court in CIT Vs. Lokhpat Film Exchange (cinema) (2008) 304 ITR 172 (Raj) and the Hon'ble Supreme Court's decision in CIT Vs. R. M. Chidambaram Pillai 1977 CTR (SC) 71, (1977) 106 ITR 292 (SC) was pleased to delete the addition on the ground that payment of the amount by a partner to a firm is the payment to self and does not partake the character of loan or deposit in general law, therefore, according to the Ld. CIT(A), the provisions of section 269SS of the Act are not applicable to the facts of the case and so he was of the considered opinion that penalty is not imposable u/s. 271D of the Act. Aggrieved, the revenue is in appeal before us.

3. We have heard rival submissions and gone through facts and circumstances of the case. We note that Shri Sumanta Roy, Smt. Mita Roy and Shri Ujjal Kanti Konar are partners of the assessee firm which fact was evident from the copy of the partnership deed

found in the assessment records. The partnership firm is not a legal entity in general law though it is treated as a taxable entity under the Income Tax Act. A firm is not a separate juristic entity distinct from its partners. The rights and duties of the partners and the meaning of the term 'firm' are to be governed by the provisions of the Indian Partnership Act. The payment made by the firm to the partner and vice versa is payment to self and it is not a transaction between two legal persons under the general law as observed by the Coordinate Bench of this Tribunal in ITA No. 1916/Kol/2004. We take note that since the cash transactions were between the partners of the firm the provisions of section 269SS of the Act is not attracted and since it was a bona fide transaction and a reasonable ground existed on which they had not adhered to the requirement of conducting the transaction through banking channel only. In the light of the aforesaid facts and circumstances of the case, relying on the order of the Hon'ble High court of Rajasthan in Lokhpat Film Exchange (cinema) (supra), we uphold the order of the Ld. CIT(A) and dismiss the ground of appeal raised by the revenue.

4. Coming to ITA No. 849/Kol/2014 (assessee's appeal). This appeal of assessee is against the order of Ld. CIT(A) confirming the penalty to the extent of Rs.2,91,500/- u/s. 271D r.w.s. 269SS of the Act. Brief facts are that the JCIT took note of the fact that the assessee had taken loan of Rs.2,47,000/- from Shri S k. Jalal by cash from 07.10.2009 to 04.01.2010 which has been repaid by cheque on 31.03.2010 (page 3 of JCIT's order). Likewise, the JCIT observed that the assessee has taken a cash loan of Rs.44,500/- from Shri Arup Mondal from 03.10.2009 to 15.10.2009 which was paid back by cheque on 31.03.2010. According to the JCIT, since the assessee had taken cash from these two individuals cash of more than Rs.20,000/- the AO was pleased to impose penalty to the extent of Rs.2,91,500/-. On appeal, the Ld. CIT(A) confirmed the addition on the ground that assessee could not give any reasonable cause for not imposing the penalty u/s. 271D of the Act. Aggrieved by the aforesaid order of the Ld. CIT(A), the assessee is before us.

5. We have heard rival submissions and gone through facts and circumstances of the case. The plea of the assessee is that the aforesaid amounts were not loan or deposit but was

trade advance in cash on various dates from these two persons. According to the assessee the said amounts were in the nature of trade advance and on failure to supply the desired products; the amounts were refunded to each of them by cheque. According to the assessee, the said amounts were in the nature of trade advance and on failure to supply the desired products the amounts were refunded to each of them by cheque. According to assessee, since the assessee has received an advance towards future supply of goods, such advances cannot fall u/s. 269SS of the Act and penalty u/s. 271D of the Act cannot be attracted and for that the assessee relied on the decision of the Hon'ble Allahabad High Court decision in CIT Vs. Kailash Chandra Deepak Kumar (2009) 317 ITR 351 (All). In order to buttress his argument the Ld. AR drew our attention to page no. 23 and 24 of the paper book which are the copy of ledger account of Sri Arup Mondal and copy of the ledger account of Shri S k. Jalal. We note that the transactions reflected in the said ledger account are from October, 2009 to January, 2010 wherein we note that there is no transaction on a day which is above the threshold limit of Rs.20,000/-. The amounts transacted are less than Rs.20,000/- and the pre-condition laid down to attract section 269 SS of the Act is not per se satisfied. Moreover, the Hon'ble Allahabad High Court has held that the provisions of section 269SS of the Act is not applicable for cash advance made between parties for purchase of goods in future. When the assessee's case is that the cash payments were advance for future supply of goods which the assessee could not fulfill so, he returned the same back to the individuals by cheque cannot attract section 269SS. The Ld. DR could not controvert the aforesaid facts. In such a scenario, we are of the considered opinion that there is no violation of section 269SS of the Act and, therefore, the penalty imposed u/s. 271D of the Act is not sustainable in the eyes of law and, therefore, is directed to be deleted. Assessee's appeal is allowed.

6. Now, we are coming to ITA No. 1347/Kol/2014 (Revenue's appeal). Revenue has filed this appeal against the order of Ld. CIT(A) dated 07.04.2014 for AY 2010-11 passed u/s. 271E of the Act.

7. Brief facts of the case are that the JCIT has imposed penalty for violation of provisions of section 269T of the Act in respect of loans returned back in cash to Shri Sumanta Roy Rs.9,03,000/-, Smt. Mita Roy Rs.8,97,000/- and Shri Ujjal Kanti Konal Rs.8,86,000/-. Since the loans were given back to these persons in cash, the JCIT imposed penalty u/s. 269T of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the same by taking note of the fact that the transaction are between partners and the partnership firm. Aggrieved, the revenue is before us.

8. We have heard rival submissions and gone through facts and circumstances of the case. We have already decided in ITA No. 1346/Kol/2014 that the transactions in cash were between partners and the partnership firm and the payments made by the firm to partners and vice versa are payment to self and, therefore, there is no violation of section 269SS of the Act. On the same logic and reasoning giving cash back by firm to partners also will not attract the provisions of section 269T of the Act, therefore, no penalty is imposable u/s. 271E of the Act. The Ld. CIT(A) has relied on the judgments cited, supra by us in the order passed in ITA No. 1346/Kol/2014 which is not repeated again for the sake of brevity and for the same reasoning, we are of the considered opinion that there is no violation of section 269T of the Act and, therefore, the penalty u/s. 271E of the Act was not warranted in this matter and, therefore, the Ld. CIT(A) has rightly deleted the penalty, which we confirm. This appeal of revenue is dismissed.

9. To sum up, in the result, both the appeals of revenue are dismissed and that of assessee is allowed.

Order is pronounced in the open court on 14.07.2017

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. D. K. Enterprise, C/o Shri Somnath Ghosh, Advocate,
Seven Brothers' Ldage, P.O. Buroshibtala, Chinsurah, Dist. Hooghly,
Pin-712105
 - 2 Respondent – JCIT, Range-1, Burdwan.
 3. The CIT(A), Asansol
 4. CIT , Asansol
 5. DR, Kolkata Benches, Kolkata
- /True Copy, By order,

Sr. Pvt. Secretary