

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

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 856/MUM/2016
Assessment Year: 2010-11**

M/s. Contiloe Films Pvt.
Ltd.
3rd Floor, Arc Plaza,
Behind Country Club Off
Veera Desai Road, Andheri
(W),
Mumbai-400053

Vs.

ACIT-16(1)
Mumbai

**PAN No. AAACC2680B
(Appellant)**

(Respondent)

Assessee by : Dr. K. Shivaram, AR
Revenueby : Shri Suman Kumar, DR

Date of Hearing : 05/07/2017
Date of pronouncement: 27/09/2017

ORDER

PER N.K. PRADHAN, A.M

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai and arises out of the penalty order u/s 269T r.w.s 271E of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under: -

1. On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in confirming penalty u/s 269T r.w.s. 271E of the Income Tax Act, 1961.
2. The appellant prays that penalty levied u/s 269T r.w.s. 271E of the Income Tax, Act, 1961 may be deleted and effect to be given to the assessment order and assessment order may be modified.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) found during the course of assessment proceedings that the assessee had made cash payment of Rs.27,00,000/- and Rs.13,50,000/- to its sister concern M/s Contiloe Entertainment P. Ltd. during the FY 2009-10 relevant to the AY 2010-11. In response to the show cause notice to explain why penalty should not be imposed u/s 269T r.w.s 271E, the AR of the assessee submitted before the AO that Rs. 27,00,000/- was directly deposited by the assessee into the bank account of M/s Contiloe Entertainment P. Ltd as there was urgent need for payment of service tax challan by its sister concern. The AO noticed that as on the date of payment of cash, the assessee had a credit balance on loan account and therefore, should have repaid the same by cheque or any other instrument other than cash. The argument of the assessee that is was in need of funds urgently and as the cheque transfer would take some time was not acceptable to the AO because of RTGS facilities in the Bank. Moreover, both the companies had accounts in the same bank. Therefore, the AO rejected the argument of the assessee that cash payment of Rs.27,00,000/- was made because of urgent financial necessity.

As regards the argument of the assessee that sum of Rs.13,50,000/- was paid towards reimbursement of expenses, the same was not acceptable to the AO for the reason that the debit note was raised on 31.12.2009 and cash was paid on 31.10.2009. Moreover, the debit note for Rs.23,71,323/- did not match with the amount of cash received. Therefore, the AO rejected the above argument of the assessee as an afterthought.

In view of the above, the AO imposed a penalty of Rs.40,50,000/- u/s 269T r.w.s. 271E of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has agreed with the findings of the AO and dismissed the appeal filed by the assessee.

5. Before us, the Ld. counsel of the assessee submits in respect of Rs.13,50,000/- that during the year the assessee had outsourced the execution of 'AR Rehman show' to its sister concern 'M/s Contiloe Entertainment Pvt. Ltd.'. The said sister concern had a running current account with the assessee with multiple transactions taking place in a year. The assessee had reimbursed the costs which were incurred by its sister concern on behalf of the assessee. The sister concern had deducted tax where applicable. It is stated by him that the assessee had submitted a copy of the 'agreement' between the two concerns before the AO vide letter dated 27.09.2009. The agreement shows the amount of Rs.25,00,000/- (approx) and terms of payment on completion of the project titled 'AR Rehman Show'. The sister concern demanded an

advance of Rs.13,50,000/- for the show which was paid. A debit note had been raised by the sister concern stating vide letter dated 31.12.2009 the total amount of reimbursement of Rs.23,71,323/- to be made by the assessee. The Ld. counsel submits that in the present case, an advance part payment of the amount required to be paid was made amounting to Rs.13,50,000/- by the assessee on the request of the sister concern vide letter dated 31.10.2009. The amount still required to be paid i.e. Rs.10,21,323/- was shown in the books as 'payable' which had been subsequently taken over by M/s Contiloe Pictures Pvt. Ltd. It is stated that the payment was made out of accounted cash balance available with the assessee. Without prejudice to the above, it is stated by him that nowhere the AO has held that the assessee had availed of a 'Deposit' or 'Loan' from Contiloe Entertainment Pvt. Ltd. as is required to be made at the threshold of section 269TT. The amount referred to is a current account balance upon which no interest fee or repayment terms had been fixed or paid.

5.1 In respect of Rs.27,00,000/- the Ld. counsel of the assessee submits that the assessee had directly deposited the above amount into the bank account of its sister concern as was required for the immediate payment of service tax liability. The cheque had already been issued and the sister concern was apprehensive that the cheque would be returned dishonoured. The payment was made on 30.09.2009. There was no net banking facility for the third party transfer set up by the assessee to transfer the said money. If the cheque was issued, it would take a few days to clear. In order to make sure that the statutory payment was made

on time, the assessee deposited Rs.27,00,000/- into the bank account of its sister concern.

Thus it is submitted on facts and law, the penalty order confirmed by the Ld. CIT(A) be deleted as the genuineness of transaction was not in doubt.

6. *Per contra* the Ld. DR submits that the argument of the assessee that Rs.13,50,000/- was paid towards reimbursement of expenses is not acceptable for the reason that the debit note was raised on 31.12.2009 and cash was paid on 31.10.2009. Moreover, the debit note is for Rs.23,71,323/- and does not match with the amount of cash received.

Regarding the payment in cash of Rs.27,00,000/-, the Ld. DR submits that as on the date of payment of cash, the assessee had a credit balance on loan account and therefore, should have repaid the same by cheque or any other instrument other than cash.

Thus the Ld. DR submits that the Ld. CIT(A) has rightly confirmed the penalty of Rs.40,50,000/- levied by the AO u/s 269T r.w.s 271E of the Act.

7. We have heard the rival submissions and perused the relevant materials on record. Let us refer to the sections mentioned by the AO. We keep in mind the relevant period. Section 269T reads as under:

“Mode of repayment of certain loans or deposits

269T. No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any

loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit

Section 271E reads as under:

“ Penalty for failure to comply with the provisions of section 269T

271E. If a person repays any loan or deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so repaid.”

What we find in the present case is that no where the AO has held that the assessee had availed of a ‘deposit’ or ‘loan’ from M/s Contiloe Entertainment Pvt. Ltd. as is required to be made out at the threshold of section 269T r.w.s 271E of the Act.

It is a settled position of law that penal statutes have to be construed strictly in the sense that if there is a reasonable interpretation which will avoid the penalty, that interpretation ought to be adopted. The Hon’ble Supreme Court in *CIT vs. T.V. Sundaram Iyengar & Sons (P) Ltd.*, (1975) 101 ITR 764, 773-74 (SC) has held that penal provisions must be construed strictly.

As the AO failed to find that assessee had availed of a ‘deposit’ or ‘loan’ from M/s Contiloe Entertainment Pvt. Ltd., we cancel the penalty of Rs. 40,50,000/- imposed by him u/s 269T r.w.s 271E.

8. In the result, the appeal is allowed.

Order pronounced in the open Court on 27/09/2017

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER
Mumbai;
Dated: 27/09/2017
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