

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1081/KoI/2016

(निर्धारणवर्ष / Assessment Year: 2007-08)

ITO, Ward-9(3), Kolkata 5 th Floor, Room-21, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata -69.	Vs.	M/s. Todi Farm and Resort Pvt. Ltd. 4, Jagmohan Mullick Lane, 1 st Floor, Kolkata – 7.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AACCT 4969 J		
(ASSEESSEE)	..	(RESPONDENT)

Assessee by : Shri Arindam Bhattacharjee, ACIT

Respondent by : Shri Subash Agarwal, Adv.

सुनवाईकीतारीख/ Date of Hearing : 20/11/2017

घोषणाकीतारीख/Date of Pronouncement : 13/12/2017

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2007-08, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–3, Kolkata, in Appeal No.2097/CIT(A)-3/W-9(3)/14-15/Kol, dated 29.02.2016, which in turn arises out of an order passed by the Assessing Officer u/s.271D of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 28.01.2015.

2. The revenue has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in not upholding the penalty u/s 271D imposed by the AO of Rs.29,00,000/-.

2. That the assessee reserves the right to amend, alter or add to any ground(s) of appeal before or at the time of hearing of the appeal."

3.The brief facts qua the issue are that the assessee company incorporated on 16.08.2006 and the share capital on incorporation of the company was at

Rs.1,50,000/- which was received in cash and no bank account was maintained by the assessee company. The assessee also purchased agricultural land at Sanganer, Jaipur at a consideration of Rs.27,50,000/- and also took unsecured loan from Swastik Enterprises amounting to Rs.3,00,000/- other than by account payee cheque and paid to the seller of the land. Assessee purchased a piece of agricultural land for Rs.29,00,000/- at Jaipur Rajasthan from two individuals. It was observed by the AO that the payment for the entire purchase of land was facilitated by a loan creditor, Viz, M/s Swastik Enterprises for Rs. 3,00,000/- paid directly to the said two sellers and a further sum of Rs. 26,00,000/- paid directly to the said two sellers and a further sum of Rs.26,00,000/- paid again directly by the promoter directors and their relatives which was subsequently accounted for in the books as share application money. Therefore, assessing officer held that the assessee has violated the provisions of section 269SS of the Income Tax Act, 1961 and therefore, the AO imposed penalty u/s 271D of the Act at Rs.29,00,000/-.

4. Aggrieved by the penalty order passed by the AO, the assessee filed an appeal before the Id. CIT(A) who has deleted the penalty. The Id CIT(A) observed that a perusal of the observations of the Id. Additional Commissioner(Assessing officer) clearly brings out the fact that he accepts that the said payments were made by drafts. During the appeal proceedings, the assessee has in fact filed copies of the drafts by which the payments were made. These were obviously available with the AO as well as the Id. Additional Commissioner. Copies of the account payee demand drafts produced were the following:

Sl. No.	In favour of	Draft No.	Amount	Date	Made in
1.	Kharun Begum	276230	9,00,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867
2.	Narmada Devi	276226	5,50,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867
3.	Khatun Begum	276231	4,00,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867
4.	Narmada Devi	276229	2,00,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867
5.	Narmada Devi	276228	4,50,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867
6.	Narmada Devi	26227	1,00,000/-	11.08.2006	Allahabad Bank, Jaipur 0211867

The above amounts come to a total of Rs 26 lakhs. As regards the rest of the Rs. 3 lakhs, the assessee has shown them to be payments through two cheques with Nos.390102 drawn against Indian Overseas bank for Rs 1.50 lakh and 390102 drawn on Indian Overseas Bank for an amount of Rs 1.50 lakh both dated 1.6.2006 in the name of Khairun Begum and Narmada Devi respectively.

As regards, the other cheques payments, the assessee produced the relevant bank accounts. After going through these payments the CIT(A) observed that there was nothing on record to show that any cash payments were actually made by any of the payers. The assessee has also filed the sale deeds in which the names of the sellers have been reflected. The Id CIT(A) observed that the Ld additional commissioner got himself misguided by the fact that the assessee company did not have any bank accounts at the time of the payments. This was an admitted fact by the assessee himself and borne out by the facts and circumstances at the time of the sale transaction. The assessee did not have a bank account at the time of the said transaction because the assessee company had, as of that time, still not been incorporated. But since the transaction had to be completed as soon as possible for reasons of the promoters, the payments were made to the sellers and the necessary book entries made into the books of account of the assessee company after it was incorporated. The mode of conveyance of the said payments had also been shown to be not in cash. Therefore, Id CIT(A) held that there is no any violation of provisions of section 269SS of the Act and therefore, he deleted the penalty u/s 271D of the Act.

5. Not being satisfied with the order of Id. CIT(A), the Revenue is in appeal before us. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. On the other hand, the

Id. Counsel for the assessee has defended the order passed by the Id. CIT(A).

6. We have given a careful consideration to the rival submissions. We are of the view that stand taken by the Id DR for the Revenue are not backed up by any evidence whatsoever. As rightly observed by the CIT(A), that during the appellate proceedings, the assessee filed copies of the drafts by which the payments were made. These drafts were available with the Assessing Officer and Id Additional Commissioner, the total amount paid through draft was Rs.26 lakhs. Regarding the balance amount of Rs.3 lakhs, the assessee had shown them to be payments through two cheques with Nos.390102 drawn against Indian Overseas bank for Rs 1.50 lakh and 390102 drawn on Indian Overseas Bank for an amount of Rs.1.50 lakh both dated 1.6.2006 in the name of Khairun Begum and Narmada Devi respectively. As regards, the other cheques payments, the assessee produced the relevant bank accounts. We find that there is nothing on record to show that any cash payments were actually made by any of the payers. The assessee has also filed the sale deeds in which the names of the sellers have been reflected. Besides, these transactions relate to before incorporation of the assessee company therefore the assessee company is not liable based on the factual position narrated above. There does not seem to be any reason for invoking the provisions of section 269SS either on the fact of the mode of such conveyance or on the legality of holding the assessee company responsible for acts committed before its incorporation. In view of the above, we quash the penalty order u/s 271D of the Act and uphold the order of the Id. CIT(A).

7. In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this 13/12/2017.

Sd/-

(N. V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता / Kolkata;

दिनांक Dated 13/12/2017

RS,SPS.

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee – ITO, Ward-9(3), Kolkata
2. प्रत्यर्थी/ The Respondent-M/s. Todi Farm and Resort Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.