

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

Before Shri Amarjit Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A Nos.1703 & 1704/Mum/2016  
(Assessment year: 2012-13)

ACIT, Cir.2, Kalyan	vs	Shri Suresh L Wadhwa (HUF) Prop of M/s Ashish Developers, Behind Krishna Co-op Housing Society, Plot No.438, O.T. Section Ulhasnagar-421 004 PAN : AALHS8678B
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Rajat Mittal
Respondent by	Dr. P Daniel

Date of hearing	16-04-2018
Date of pronouncement	04-05-2018

**ORDER**

Per G Manjunatha, AM :

These two appeals filed by the revenue are directed against separate but identical order of the CIT(A)-3, Thane dated 02-12-2015 and they pertain to assessment year 2012-13. Since both the appeals pertain to same assessee, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The brief facts of the case are that in this case, the assessment was completed u/s 143(3) of the I.T. Act, 1961 for AY 2012-13 on 11-07-2014 determining the total income at Rs.76,39,530, as against returned

income of Rs.56,87,533. During the course of assessment proceedings, the AO noticed that the assessee had accepted and repaid cash loans exceeding Rs.20,000 in contravention of provisions of section 276SS and 276T of the Act. The details of cash loans accepted and cash loans repaid are as follows:-

I. Cash Loans Accepted Penalty u/s 271D:

1. During the year, following amounts have been accepted in cash from immediate family members and / or closely associated concerns in respect of which penalty u/s 271D is levied.

Sr.No.	Name of Loan Creditors	Acceptance of Loan in Cash	Relation
1.	M/s Ankit Developers	8,40,000/-	Karta is Managing Partner
2.	M/s Sai Baba Construction, Kalyan	9,50,000/-	-do-
	Total	17,90,000/-	

II. Cash Loans Repaid Penalty u/s 271E

1. During same year, following amounts have been repaid in cash to immediate family members and / or closely associated concerns in respect of which penalty u/s 271E is levied:-

Sr.No.	Name of Loan Creditors	Repayment of Loan in Cash	Relation
1.	M/s Ashish Developers, Kalyan	2,50,000/-	Karta is Managing Partner
2.	M/s Sai Baba Construction,	24,14,,000/-	-do-
3.	M/s Sai Baba Developers	7,40,000/-	-do-
4.	Shri Prakash Wadhwa, Ulhasnagar-4	7,50,000/-	Nephew of Karta
-	Total	41,54,000/-	

The AO further observed that though the assessee has furnished confirmations and ledger accounts of the parties from whom loans were accepted and repaid, but failed to offer any reasons for repaying cash

loans in excess of Rs.20,000. Therefore, show cause notice u/s 271D and 271E of the Act, were issued and asked as to why penalty shall not be levied for contravention of provisions of section 269SS and 269T of the Income-tax Act, 1961. In response to show cause notice, the assessee submitted that it had accepted cash loans in excess of Rs.20,000 from two parties on the bona fide belief that acceptance of cash loans from group concerns and related parties would not hit the rigours of provisions of section 269SS and 269T. The assessee further submitted that it was being karta of HUF is also partner in M/s Ashish Developers, M/s Sai Baba Constructions and Sai Baba Developers and all three firms are managed by karta of HUF as a managing partner. The assessee further submitted that it had accepted cash loans from its partnership firms for the urgent need of business as it needed to repay certain booking amounts to customers on cancellation of bookings. The assessee has given reasons for accepting cash loans and repayment of cash loans with necessary evidences. The AO, after considering relevant submissions of the assessee and also on analysis of provisions of sections 269SS and 269T observed that the assessee has violated the provisions of 269SS and 269T of the Act wherein it has been envisaged that a person shall not accept or repay any loan or deposit otherwise than by an account payee cheque or bank draft. The AO

further observed that although the assessee has furnished confirmations of ledger accounts from the persons from whom loan has been accepted in cash and also repaid in cash, failed to establish that such loan was actually taken from the impugned parties and utilized for business purposes. The assessee also failed to establish the reasonable cause in accepting cash loans and repaying such loans in cash. Therefore, he opined that the assessee has violated provisions of section 269SS and 269T of the Act; therefore, it is a fit case for levy of penalty u/s 271D and 271E for contraventions of provisions of sections 269SS and 269T of the Act. Accordingly he levied penalty of an amount equal to the loan borrowed and repaid in cash.

3. Aggrieved by the penalty order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has filed elaborate written submissions which has been reproduced in paragraph 4 of CIT(A) on pages 4 to 12. The assessee also relied upon plethora of judgments, including the decision of Hon'ble Bombay High Court in the case of CIT vs Mahabal Shetty (2011) (P) TMI 189 (Bom). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that cash loans accepted from sister concerns and related parties and repayment of cash loans to certain parties are genuine transactions which are duly recorded in books of account and it had furnished

necessary evidences including confirmation from the parties to prove such loans. The assessee further submitted that the AO has never doubted genuineness of transactions which is evident from the findings of facts recorded by the AO in his penalty order. However, he levied penalty on the ground that the assessee has failed to explain reasonable cause for not accepting loans in cheques and also repayment of such loans in cheques. But, fact remains that it has explained the reasons for accepting loans in cash in excess of Rs.20,000 before the AO.

4. The Ld.CIT(A), after considering relevant submissions of the assessee and also relying upon the decision of Hon'ble Bombay High Court ,in CIT vs Mahabal Shetty (supra), observed that it is not a fit case to levy penalty u/s 271D and 271E of the Act, for the reason that the AO did not doubt the genuineness of the transactions and the assessee has proved that acceptance of loan and repayment of loan by cash have been recorded in the books of account. The relevant portion of the order of CIT(A) is extracted below:-

***"5.0 Ground Nos. 1 to 5** are directed against penalty imposed of Rs.41,54,000/- U/S.271E of the Act.*

*(i) I have carefully considered the submissions of the appellant, the observations of the AO in the penalty order, case laws relied upon by the appellant and the facts of the case, and therefore, I proceed to decide the appeal of the appellant.*

***(ii)** The AO has discussed from Para 4 to 7 in the penalty order the reasons for levying penalty u/s.271E of the Act. The relevant extracts are **a)** the AO did not accept the contention of the assessee that transactions were exempt from 269T since all the firms were controlled by the same entity and also there was no evasion of tax **b)** The assessee has violated the provisions of*

section 269T as the repayment of loan or deposit has to be made by account payee cheque but repaid the loan amount by cash **c}** the Assessee also failed to prove that there was reasonable cause, **d}** The urgency of repayment of loan in cash is not established **e}** ignorance of law is not an excuse

**(iii)** The AR of the appellant on the other hand, justify that it is not a fit case to impose penalty u/s.271E of the Act on the following reasons **a)** The aforesaid amounts have been accepted in cash from immediate family member and/or closely associated concerns **b)** The same aforesaid amounts have been repaid in cash to immediate family members and/or closely associated concerns **c)** Cash paid to both the associated concerns is in the nature of constructions, and therefore, the requirement of cash payments to labourers/workers has become necessity, being the year of completion **d)** Although appellant was not having requisite cash, but the karta was holding cash in hand pertaining to other firms managed and controlled by him, therefore, cash lying with karta was utilized for business purpose, **e)** No difference as far as Individual and karta is concerned as it is one and the same person, therefore, both the firm were also managed by Karta i.e. Suresh Wadhwa and there was no contravention in using cash of these concerns, **f)** The bonafide belief was on account of the advice of CA as no comments of any such violation has been mentioned in clause 24 of Form No. 3CD. **g)** Both these associated concerns are assessed to tax and regularly filing return income and these loan transactions are duly reflected in the Balance sheet, **h)** the objective behind these provisions is to curb black money, but not so in these cases because the transactions of cash loans are reflected in the books of accounts.

**(iv)** The AR of the appellant has place reliance on various judicial decisions **a)** Jurisdictional High Court in the case of CIT vs. Mahabal Shetty, (2011) (9) TMI 189(Bom) has upheld the ITAT judgment cancelling the penalty order u/s.271D/E on the ground that the transactions were genuine and therefore violation of section 269SS/T can be best termed as technical violation, **b)** K. Enterprises vs. CIT (2014) (Mumbai ITAT) 41 Taxmann .com 235 - no penalty in case of cash transactions in routine business due to common control between lender and borrower **c)** Envogue Wood Working Pvt. Ltd. vs. ACIT (Delhi-ITAT) - urgency of funds for business - a reasonable cause, **d)** CIT vs. Shree Ambica Flour Mills Corporation (Guj High Court) 6 DTK 169-The intention behind provisions is curbing of black money - transaction recorded in books - only a technical / venial breach, **e)** CIT vs Smt. M. Yesodha (Madras High Court) 351 ITR 265- genuine transaction between family members is a reasonable cause **Q** CIT vs. Dhayam Publication 285 ITR 221 (Madras) - not applicable to current account type transactions **g)** CIT vs Saini Medical Store 276 ITR 79 - No intention to evade taxes - No penalty.

In view of the above stated facts, I am of the opinion that it is not a fit case penalty u/s. 271E of the Act on the following reasons **a)** the AO did the genuineness of the transactions and the appellant has proved that the payment of loan and repayment of loan by cash have been recorded in the books of accounts **b)** the case laws relied upon by the appellant squarely covered in favour of the appellant **c)**. The Jurisdictional High Court in the case of CIT vs. Mahabal Shetty squarely covered in favour of the appellant, therefore, the penalty imposed u/s.271E of the Act is deleted and the appeal of the appellant on this ground is allowed."

5. The Ld.DR submitted that the Ld.CIT(A) failed to appreciate the fact that the provisions of section 271D and 271E would attract, the moment the assessee violates provisions of sections 269SS and 269T by accepting or repaying cash loan in excess of Rs.20,000 irrespective of the fact that whether such loans have been received from relatives or associate concerns and also such loans have been recorded in the books of account of the assessee. The genuineness or otherwise of the loan is not a criteria for levying penalty u/s 271D and 271E. What is relevant is whether the assessee has explained the reasonable cause for not accepting such loans in cash which comes within the ambit of provisions of section 273B. If, the assessee fails to explain the reasonable cause for not accepting or repaying loans otherwise than by an account payee cheque or demand draft, then automatically the penal provisions will come into play. In this case, although the assessee has proved the genuineness of transactions, but failed to offer any explanations for not accepting loans otherwise than by an account payee cheque or demand draft. Therefore, the AO was right in levying penalty u/s 271D & 271E of the Act, and his order should be upheld.

6. On the other hand, the Ld.AR for the assessee strongly supported order of the CIT(A). The Ld.AR further submitted that the purpose of insertion of provisions of section 269SS & 269T and corresponding

penal provisions u/s 271D and 271E is to curb circulation of black money in the market, but not penalize the assesses for having done genuine transactions. The Ld.AR further submitted that the assessee has proved beyond doubt with necessary evidences that loans accepted and repaid in cash is from related parties and associate concerns, where the karta of HUF is the managing partner and also managing all 3 firms. The Ld.AR further submitted that the assessee also explained the reasons for accepting and repayment of loan in cash which comes within the ambit of reasonable cause as provided u/s 273B. Therefore, the CIT(A) was right in deleting penalty u/s 271D and 271E and his order should be upheld.

7. We have heard both the sides, perused the material available on record and gone through the orders of authorities below. The factual matrix of the impugned dispute are that the assessee has accepted cash loans from M/s Ankit Developers, Sai Baba Constructions where the karta of HUF is managing partner. The assessee also repaid cash loans in excess of Rs.20,000 to M/s Akash Developers, M/s Sai Baba Constructions, M/s Sai Baba Developers and Shri Prakash Wadhwa. There is no dispute with regard to the fact that the partnership firms, M/s Ankit Developers, M/s Sai Baba Construction, M/s Sai Baba Developers and M/s Ashish Developers are related and associate concerns of the

assessee. The assessee is a managing partner in all 4 firms and also all firms are involved in similar business of real estate development. Though, the assessee claims that Shri Prakash Wadhwa is a related party, but facts indicate that he is not directly associated with its business concerns. The AO levied penalty of Rs. 17,90,000 u/s 271D for contraventions of provisions of section 269SS, on the ground that the assessee has accepted loans in cash in excess of Rs.20,000 otherwise than by account payee cheque or by demand draft. The AO also levied penalty of Rs.41,54,000 u/s 271E for contraventions of provisions of section 269T, on the ground that the assessee has repaid cash loans in excess of Rs.20,000. According to the AO, though the assessee has filed confirmation from the persons from whom loan has been accepted or repaid to prove genuineness of transactions, but failed to prove reasonable cause for not accepting or repaying such loans other than by account payee cheque or draft. It is the contention of the assessee that it has accepted or repaid loans in excess of Rs.20,000 in cash from immediate family members or closely associated concerns and also explained the reasons for accepting such loans or repaying in cash with necessary evidences. The assessee further contended that there is no difference as far as individual and karta is concerned and it is one and the same person. Therefore, all the firms were managed by the karta

and loans were accepted from partnership firms for immediate business purposes. Therefore, the AO was incorrect in holding that the assessee has contravened the provisions of section 269SS & 269T which warrants levy of penalty u/s 271D & 271E of the Act.

8. Having heard both the sides and considered material on record, we find merit in the arguments of the assessee in respect of loans accepted from M/s Ankit Developers & M/s Sai Baba Constructions and also loans repaid to M/s Ashish Developers, M/s Sai Baba Construction & M/s Sai Baba Developers for the reason that all these concerns are partnership firms wherein the karta of HUF is the managing partner. We further notice that the assessee has filed necessary evidence including confirmation from the persons from whom loans were accepted or repaid in cash in excess of Rs.20,000 and also explained the reasons for accepting or repaying such loans. In our view, the reasons given by the assessee comes within the ambit of reasonable cause as provided u/s 273B of the Act. Therefore, we are of the considered view that the AO was erred in levying penalty u/s 271D & 271E, in respect of cash loans accepted from associated / sister concerns when the assessee has fully explained such loans with necessary evidences. We also draw support from the decision of Hon'ble Bombay High Court in the case of CIT vs Mahabal Shetty (supra), wherein the Hon'ble High Court held that when

the transactions are genuine, then the violations of section 269SS & 269T can at best be termed as technical violation and, therefore, penalty cannot be levied u/s 271D & 271E for contraventions of provisions of sections 269SS & 269T of the Act. However, this explanation of the assessee cannot be accepted insofar as repayment of cash loan to Shri Prakash Wadhwa, nephew of the assessee. Though, the assessee claims that it had repaid loan to Shri Prakash Wadhwa as he needed cash for his own business exigencies, failed to adduce any evidence to justify his argument. Mere fact that the person was earlier working with the assessee and he has advanced his personal funds to the assessee for safe keeping is not a ground for coming out of the provisions of section 269T of the Income-tax Act, 1961. Therefore, we are of the considered view that the assessee has failed to explain the reasonable cause for not repaying loan to Shri Prakash Wadhwa other than by way of cheque or demand draft and hence, the AO was well within his right to levy penalty u/s 271E of the Act. The CIT(A), without appreciating the fact, simply deleted penalty levied u/s 271E in respect of repayment of loan to Shri Prakash Wadhwa. Therefore, we are inclined to uphold finding of the Id.CIT(A) to delete penalty levied u/s 271D of the Act and also deletion of penalty levied u/s 271E in respect of repayment of loans to various parties, except in the case of Shri Prakash Wadhwa.

9. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 04<sup>th</sup> May, 2018.

Sd/-

sd/-

(Amarjit Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 04<sup>th</sup> May, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai