

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA Nos. 192 & 193/Chd/2018**

(Assessment Years: 2011-12)

Shri Mohinder Pal Singh 8-A, Kitchlu Nagar Ludhiana	Vs.	The Addl. CIT Range- VII Ludhiana
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PAN: ADVPS2237F

**ITA Nos. 194 & 195 /Chd/2018**

(Assessment Years: 2011-12)

Shri Ramneek Sehgal 8-A, Kitchlu Nagar Ludhiana	Vs.	The JCIT Rang-VII Ludhiana
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PAN: AVMP52817A

(Appellant)

(Respondent)

Assessee by	:	Shri. Nikhil Goyal
Department by	:	Shri Manu Malik
Date of hearing	:	04/06/2018
Date of Pronouncement	:	08/06/2018

**ITA Nos. 196 & 197 /Chd/2018**

(Assessment Years: 2011-12)

Smt. Paramjeet Kaur 8-A, Kitchlu Nagar Ludhiana	Vs.	The JCIT Range-VII Ludhiana
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PAN: AIPPS7061J

(Appellant)

(Respondent)

Assessee by	:	Shri. Nikhil Goyal
Department by	:	Shri Manu Malik
Date of hearing	:	05/06/2018
Date of Pronouncement	:	08/06/2018

**ORDER**

**PER BENCH:**

All the above appeals have been filed by different Assesseees against the order of the Ld. CIT(A)-3, Ludhiana. Since the issues involved are common in all the above appeals pertaining to penalty under section 271D and 271E therefore

they are being adjudicated by way of this common order by taking the case of Mohinder Pal Singh in ITA No. 192/193 CHD-2018 as the lead case.

2. Appeal wise grounds reproduced here under:

**Grounds of appeal in ITA No. 192-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 61,49,385/- under section 271D of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before him in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

**Grounds of appeal in ITA No. 193-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 79,55,010/- under section 271D of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

**Grounds of appeal in ITA No. 194-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 22,91,700/- under section 271D of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

**Grounds of appeal in ITA No. 195-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 8,70,500/- under section 271E of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

**Grounds of appeal in ITA No. 196-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 75,04,000/- under section 271E of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

**Grounds of appeal in ITA No. 197-CHD-2018 for A.Y. 2011-12**

1. That the Ld. CIT(A) has erred in upholding the imposition of penalty of Rs. 76,68,000/- under section 271E of the Act which is arbitrary and unjustified.
2. That the Ld. CIT(A) has failed to appreciate the reasonable cause pleaded before her in the correct perspective and as such the order passed by him is arbitrary and unjustified.
3. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

3. Brief facts of the case are that the assessee has received cash loan from the company namely M/s Ceigall India Ltd. Ludhiana in which he is a Director. The amounts in cash have been received were varying from Rs. 15,000/- to Rs. 8,00,000/-.

4. Before the Assessing Officer during the penalty proceedings under section 271D the assessee explained that *"all the cash entries are by deposits in one account by withdrawing the same from other bank due to emergency of passing of cheques from the accounts and the entries due to business exigency hence covered under reasonable cause and no entry is un genuine, no entry has been carried with mala fide intention and there is no loss to the Revenue"* . The assessee has submitted the bank statements of M/s Ceigall India Ltd. from where the cash was withdrawn by the company, the entry wise clarification was also submitted before the Assessing Officer and reiterated that the cash loans was given due to business exigencies. The assessee contended that penalty is not leviable as the transactions are genuine, the loans were taken for immediate business requirement and there was a reasonable cause for accepting the deposit in cash.

5. The Assessing Officer held that there cannot be any emergency situation on 35 occasions over a period of one year and there was no reasonable cause for withdrawal of the cash from one account and depositing the same in the personal account of the Director and held that since the assessee has not given any evidence to substantiate the claim of reasonable cause and hence penalty is leviable.

6. The Ld. CIT(A) confirmed the penalty on the grounds that the assessee has failed to substantiate its claim even during the appellate proceedings about the

reasonableness of urgency of the cash loan. The Ld. CIT(A) relied on the judgment in the case of *Tenamal Chajjer* (2005) 96 ITD 210 (Chennai) wherein it was held that the provisions of Section 269SS is very strict and will apply strictly where the loan or deposit is taken or accepted from any other person otherwise by an account payee cheque or account payee draft if the amount of such loan or deposit or the aggregate amount of such loan or deposit is Rs. 20,000 or more. The only saving clause for reasonable cause is provided in section 273B for violation of section 269SS and in view of this provision, no penalty under section 271D will be imposed if there is any reasonable clause. The Ld. CIT(A) has also relied on the judgment in the case of *Khijaria Leathers* 99 TTJ 616 (Chennai) wherein it was held that the genuineness of transactions do not exclude the provisions of Section 269SS.

7. Before us the Ld. AR argued that the transactions entered between the assessee who is a director in the company from where the cash deposits have been received cannot be treated as loan or deposit at all as envisaged in the provisions of Section 269SS as the amount has been withdrawn by the Director from the current account maintained by the company. He argued that it is not the case of the Department that any unaccounted cash has been identified in the case of the assessee. He further argued that the assessee is a director maintaining current account with the Company and the assessee is regularly withdrawing funds from the Company either in cash or via bank transfers and the reason for the same has been explained on Page 4-5 of the CIT(A) order. Similarly, the assessee is transferring the funds to the account of the Company as and when required at the time of emergency needs of the funds by the Company at the time of clearing of the cheques in the regular course of the business. At times the transaction is being settled with the salary income or against the funds transferred by the assessee either via cash or by bank transfers. This is regular transaction between a director and a Company and this

does not at all constitute loans and deposits as envisaged under section 269SS of the Act.

7.1. The Ld. AR further argued that it is not the case of the department that any unaccounted cash has been found, identified or detected in the case of the assessee. There is always been a corresponding entry in the current account of the Director maintained by the company. To that extent he argued that the purpose of the enactment of the provision of Section 269SS is to stop the circulation of unaccounted cash or introduction of unaccounted monies into the books by the way of loans which is not the case in the case of the assessee. He further relied on the judgment in the case of CIT Vs. Idhayam Publications Ltd. 163 Taxmann 265 wherein it was held that the payment of monies into current account and withdrawals of monies from the current account in the presence of any other evidence cannot attract provisions of Section 269SS. Further reliance was also placed in the case of S.R. Associated Construction Vs. JCIT (ITAT Kolkata)- ITA No. 209 & 210/Kol/2013 wherein it was held that the transactions between the company and its Director maintained in a current account would neither be categorized as a loan or deposit.

8. The Ld. DR vehemently supported the order of the Ld. CIT(A) wherein the Ld. CIT(A) in (para no. 7) confirmed the order on the ground that the plain provisions of the Act is duly attracted. Regarding the case laws cited by the Ld. AR namely CIT Vs. Idhyam Publications Ltd., S.R. Associated Construction (supra) no contrary decision was brought to our notice.

9. We have heard Ld. Representatives of both the parties and perused the material placed before us.

10. The issue is whether penalty can be levied in the absence of any other material to prove or indicate introduction of unaccounted money or any doubt casted by the department regarding the genuineness of the source or whether the assessee has brought reasonable cause to enter into such transactions. On

perusal of the records the reasonable cause as canvassed by the assessee is examined below:

Date	Amount Deposit received cash	of in	Justification of cash withdrawal
15/04/2010	15,000/-		Household withdrawal for the month of April 2010 against the salary for the month of April 2010
29/04/2010	5,00,000/-		Cash withdrawn from the company and deposited with PNB S/A
14/05/2010	15,000/-		Household withdrawal for the month of May 2010 against the salary for the month of May 2010
31/05/2010	2,00,000/-		Cash withdrawn from the company and deposited with PNB S/A
12/06/2010	15,000/-		Household withdrawal for the month of June 2010 against the salary for the month of June 2010
28/06/2010	50,000/-		Cash withdrawn for payment of HDFC credit card.
06/07/2010	1,94,335/-		Cash withdrawn for payment of HDFC credit card.
10/07/2010	15,000/-		Household withdrawal for the month of July 2010 against the salary for the month of July 2010
10/08/2010	15,000/-		Household withdrawal for the month of Aug. 2010 against the salary for the month of Aug. 2010
27/08/2010	5,70,000/-		Cash withdrawn from the company and

06/09/2010	44,000/-		deposited with PNB S/A Cash withdrawn for payment of HDFC credit card.
10/09/2010	15,000/-		Household withdrawal for the month of Sept. 2010 against the salary for the month of Sept. 2010
04/10/2010	6,35,000/-		Cash withdrawn from the company and deposited with PNB S/A
04/10/2010	2,00,000/-		Cash withdrawn from the company and deposited with PNB S/A
07/10/2010	25,000/-		Cash withdrawn for payment of HDFC credit card.
29/10/2010	15,000/-		Household withdrawal for the month of Oct. 2010 against the salary for the month of Oct. 2010
01/11/2010	4,67,000/-		Cash withdrawn from the company and deposited with PNB S/A
02/11/2010	50,000/-		Cash withdrawn from the company and deposited with PNB S/A
12/11/2010	15,000/-		Household withdrawal for the month of Nov. 2010 against the salary for the month of Nov. 2010
01/12/2010	5,06,000/-		Cash withdrawn from the company and deposited with PNB S/A
09/12/2010	79,000/-		Cash withdrawn for payment of HDFC credit card.
10/12/2010	15,000/-		Household withdrawal for the month of Dec. 2010 against the salary for the month of Dec. 2010
20/12/2010	28,000/-		Cash withdrawn for payment of cash to Sh. Pritam Singh from whom purchase of land has been purchased.
20/12/2010	1,05,000/-		Cash withdrawn for purchase of Stamp Paper against purchase of land.
01/01/2011	5,06,000/-		Cash withdrawn from the company and deposited with PNB S/A
06/01/2011	8,00,000/-		Cash withdrawn from the company and deposited with PNB S/A
08/01/2011	81,200/-		Cash withdrawn for payment of HDFC credit card.
10/01/2011	15,000/-		Household withdrawal for the month of Jan. 2011 against the salary for the month of Jan.

18/01/2011	5,850/-		2011 Income Tax paid
08/02/211	15,000/-		Household withdrawal for the month of Feb. 2011 against the salary for the month of Feb. 2011
23/02/2011	10,000/-		Cash withdrawn for opening of new current account with PNB.
24/02/2011	90,000/-		Cash withdrawn for payment of HDFC credit card.
02/03/2011	15,000/-		Household withdrawal for the month of March 2011 against the salary for the month of March 2011
08/03/2011	8,00,000/-		Cash withdrawn from the company and deposited with PNB S/A
28/03/2011	23,000/-		Cash withdrawn for payment of HDFC credit card.

Date	Amount Deposit received cash	of in	Justification for cash deposited
06/05/2010	12,00,000/-		Cash withdrawn from PNB Current Account and given to Company.
27/12/2010	2,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
03/01/2011	6,78,000/-		Cash withdrawn from HDFC Current Account and given to Company.
05/01/2011	90,000/-		Cash withdrawn from HDFC Current Account and given to Company.
07/01/2011	2,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
15/02/2011	5,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
17/02/2011	5,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
08/03/2011	8,00,000/-		Cash withdrawn from PNB Current Account and given to Company.
21/03/2011	8,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
21/03/2011	7,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
25/03/2011	8,00,000/-		Cash withdrawn from HDFC Current Account and given to Company.
25/03/2011	5,00,000/-		Cash withdrawn from HDFC Current Account

25/03/2011	7,00,000/-		and given to Company. Cash withdrawn from HDFC Current Account and given to Company.
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The reasons given by the assessee are

1. Household withdrawals against the salary
2. Cash withdrawn from the company and deposited with PNB SB Account
3. Credit Card payment

Similarly the assessee has given loan to the company mentioned the reasons as

1. Cash withdrawn from HDFC Account and given to the company.

11. All these transactions have been undertaken between two bank accounts by withdrawing cash from one account and depositing the cash into the other account. The source of repayment or payment of loan was never in question. There was no leakage of Revenue or detection of circulation of unaccounted money by way of cash loans which was the fundamental purpose to curb the circulation of black money. The transactions have been taken place between two current accounts and also between the Director of the Company and the Company itself in the form of maintenance of a current account for contingencies of business purpose and also for contingencies of the Director for salary and payment of credit card dues. While such transactions may attract other provisions of the Income Tax Act, 1961, but it is not a fit case for the levy of penalty under section 271E/271D. Hence keeping in view the facts of the instant case and for reasons mentioned above, and in the absence of any evidence of introduction of unaccounted money and following the judgments in the case of CIT Vs. Harpal Singh Jaswant Singh in ITA No. 146 of 1995 (P&H High Court) and

CIT Vs. Saini Medical Stores 277 ITR 420, and CIT Vs. Sunil Kumar Goyal 183 Taxman 53, and keeping in view the facts and circumstances specific to the instant case, no penalty can be leviable under section 271E and Section 271D of the Income Tax Act.

12. In the result all the appeals of the Assessee's are allowed.

Order pronounced in the open Court.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**  
Dated : 08/06/2018

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

AG

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR