

IN THE INCOME-TAX APPELLATE TRIBUNAL "J" BENCH MUMBAI  
BEFORE SH. RAJENDRA ACCOUNTANT MEMBER  
AND SH. SHRIPAWAN SINGH, JUDICIAL MEMBER AND  
ITA No.598/Mum/2017 (Assessment Year 2012-13)

DCIT CC –7 (3),  
Room No.655,65<sup>th</sup> Floor,  
Aayakar Bhawan,  
M.K.Road,  
Mumbai 400020  
Represented by Miss Aarju Garodia Sr DR

----- Appellant / Revenue

Versus

M/s Jineshwar Real Estate & Farms P Ltd  
216, Shah and Nahar Industrial Road,  
Off. Dr. E. Moses Road,  
Worli  
Mumbai-400020.

**PAN: AABCJ8083E**

----- Respondent / Assessee

Represented by Shri Vijay Mehta CA (AR)

Date of Hearing : 25.06.2018

Date of Pronouncement : 26.06.2018

Order under section 254(1) of Income –tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue under section 253 of Income tax Act is directed against the order of learned Commissioner (Appeals)- 49, Mumbai dated 2<sup>nd</sup> November 2016 for assessment year 2012- 13, which in turn arises from penalty levied under section 271D by the Additional Commissioner of Income tax (ACIT) vide its order dated 28 September 2015. The revenue has raised following ground of appeal.

(1) *On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in deleting penalty of Rs.1099595 /-levied under section 271D of the Income tax Act 1961*

*on the ground that genuineness of the transaction made through journal entries is not in doubt.*

(2) *On the facts and in the circumstances of the case in law, the learned Commissioner (Appeals) having held that assessee had contravened the provision of section 269SS of the Income tax Act 1961, ought to have upheld the levy of penalty under section 271D as the assessee failed to establish the compelling reason or genuine business constraint or reasonable cause for having connection in respect of each and every journal entry with its group concern.*

2. Brief facts of the case are that assessee is a Private Limited Company, engaged in the business of development and construction of Real Estate, filed its return of income for assessment year 2012-13 on 30 September 2012 declaring loss of Rs. 6428/-. The assessment was completed under section 143 (3) on 31 March 2015 determining the same loss as declared in the return of income. The assessing officer during the assessment proceeding noted that assessee has received loan from sister concern through journal entries. The assessee explained its business expediency as reasonable cause for passing the journal entries and also filed copy of Ledger Account of sister concern with whom the journal entries were made. The contention of assessee was not accepted as reasonable one by assessing officer; therefore, the assessing officer referred the matter to the Additional Commissioner of Income tax. On receipt of reference the ACIT issued notice for initiation of penalty under section 271D. The ACIT issued show cause notice under section 271D read with section 274 on 3 July 2015. The assessee filed its detailed reply on 13 July 2015. The ACIT after giving hearing to the assessee company levied penalty under

section 271D for f Rs. 1099595/-, vide its order dated 29 September 2015. On appeal before Id. Commissioner (Appeals) the Penalty levied under section 271D was deleted. Therefore, aggrieved by the order of learned Commissioner (Appeals) the revenue has filed present appeal before this Tribunal.

3. We have heard the learned departmental representative ('DR') for the revenue and learned authorized representative ('AR') of the assessee and perused the material available on record. At the outset of hearing the learned AR of the assessee submits that the grounds of appeal raised by revenue is covered in favour of assessee by the decision of Hon'ble jurisdictional High Court in assessee's group cases in CIT Vs Ajinath Hitech builders Private Limited & others in ITA's No. 171, 172, 202, 2.3, 218 and 219 of 2015 dated 06<sup>th</sup> February 2018 and further by the decision of co-ordinate bench of Tribunal in CIT versus Aasthavinayak Estate Company Ltd ( ITA No. 602/M/ 2017 dated 31 May 2018 and CIT Vs National Standard India Ltd ( ITA No. 6607/M/2016 and 6609/M/2016 dated 6<sup>th</sup> June 2018. The learned AR of the assessee further submits that the journal entries were made prior to 12 June 2012 as the present appeal pertains to assessment year 2012-13. Therefore, the ratio of decision in CIT Vs Trump International (I) Ltd dated 12 June 2012 (345 ITR 270)/ [22 Taxmann.com 138(Bom)] is not applicable.

4. On going through the various decision of Tribunal and the decision of Hon'ble jurisdictional High Court in case of assessee's group case in CIT Vs Ajinath Hitech builders Private Limited (supra) the learned DR conceded that the ground of appeal raised by the revenue are covered in favour of assessee by various decision of Tribunal as refereed by Id AR for the assessee.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. The ACIT levied the penalty under section 271D on his observation that the assessee accepted loan/ deposits from sister concern through journal entries i.e. otherwise then account payee cheque/draft, thereby violated the provisions of section 269SS. The assessee has taken journal entries of Rs. 10,99,595/-from Dharamnath Buidtech & Farm Pvt Ltd. The assessing officer further held that the assessee has not made out any case of reasonable cause under section 273B by making the reference the decision of honorable Bombay High Court in Trump International Finance (I) Ltd (supra).
6. Before Id. Commissioner (Appeals) the assessee urged that the journal entries have been made with the group concern under the bonafide belief that such transaction would not be hit by the provisions of section 269 SS in view of the various judicial decision on this issue, including the decision of Delhi High Court in case of NOIDA Toll Bridge (262 ITR 260) and such loan by way of journal entries transaction were undertaken

for various commercial reasons like assigning or receivable for operational efficiency, payment on the group concern for squaring up connection, for ease of consolidation of accounts, rectification entries etc. The learned Commissioner (Appeals) after referring the decision of Bombay High Court in Trump International (supra) held that repayment of loan /deposit by way of journal entries was in contravention of provision of section 269SS has been given after the close of financial year 2011-12 relevant to assessment year 2012-13. The learned Commissioner (Appeals) concluded that reasons disclosed by assessee constitute reasonable cause within the meaning of section 273B of the Act; particularly in light of the fact that there is no finding that such transaction was undertaken to evade the tax. The learned Commissioner (Appeals) while considering the contention of assessee also observed that there is no finding that transaction by way of journal entries were undertaken to evade tax and deleted the penalty.

7. The Co-ordinate bench of Tribunal in assessee's own case in DCIT v. M/s Aashthavinayak Estate Company Ltd. (supra) while following the similar ground of appeal, the assessee's group cases passed the following order:

5. We have considered rival contentions and carefully gone through the orders of the authorities below. We have deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. We had also carefully gone through the orders of the

Tribunal in the group cases of the assessee which was upheld by the Hon'ble Jurisdictional High Court as stated above.

6. From the record we found that AO has levied penalty u/s.271D for accepting loan by way of Journal entries. The Assessing Officer had placed reliance on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) rendered on 12.06.2012. It is not disputed that in this judgment it was held that there was violation of the provisions of S. 269T of the Act in a case where the loan was repaid by way of a journal entry entailing levy of penalty u/s. 271E of the Act. However, at the same time it was also held that levy of penalty could be avoided on showing reasonable cause. In the premises, levy of penalty u/ss. 271D of the Act is not automatic, but the genuineness or otherwise of the reasons due to which repayment was made by journal entry has to be considered judiciously.

7. In the order reported as Lodha Builders (P) Ltd. v. ACIT [2014] 163 TTJ 778 (Mum), a bunch of appeals belonging to Lodha group (to which the present assessee belongs) involving identical issue, was disposed of by the co-ordinate Bench in which levy of similar penalties was held to be not sustainable as there was a reasonable cause, copies of which have been placed on record. In deciding the dispute in favour of the assessee, the Hon'ble Tribunal had considered and applied the ratio laid down by the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270).

8. The aforesaid order of the Hon'ble Tribunal was approved by the Hon'ble jurisdictions! High Court in their judgment and order dated 06.02.2018 in the case of CIT v. Ajinath Hi-Tech Builders Pvt Ltd. and others, copies of which have also been placed on record. In this case, it was also held that prior to the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270), there were series of orders on this point holding that journal entry would not fall foul of S. 269SS of the Act. Since the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) was rendered on 12.06.2012, it was held, that the assessee could have had a bonafide belief prior to that date that there was no violation of S. 269SS of the Act in accepting loan by journal entry.

9. While deciding the issue, the CIT(A) has also followed the decision of Jurisdictional High Court in case of group concern of the case. The facts and circumstances during the year under consideration are same, accordingly, we do not find any infirmity in the order of CIT(A) for deleting the penalty imposed u/s.271D by relying on the decision of Jurisdictional High Court in group case of the assessee.

8. Further, the co-ordinate bench in assessee's group case in DCIT v.

National Standard India Ltd. (supra) while referring the decision of Hon'ble jurisdictional High Court in CIT v. Ajitnath Hi-Tech Builders

Pvt. Ltd. (supra) held that the journal entries passed prior to 12.06.2012, the date on which Bombay High Court in case of CIT v. Triumph International Finance (I) Ltd. was pronounced. Therefore, prior to 12.06.2012 it can be safely concluded, wherein the assessee under the bonafide belief, passed journal entry, could not be subject to penalties under section 271D & 271E.

9. Considering the decision of Hon'ble Bombay High Court in case of CIT v Ajitnath Hi-Tech Builders Pvt. Ltd.(supra) and Tribunal's orders in assessee's group case in National Standard India and M/s Aashthavinayak Estate Company Ltd. (supra), we do not find any reason to interfere with the finding of ld. Commissioner (Appeals).

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

Order pronounced in the open court on this 26<sup>th</sup> Day of June, 2018.

**Sd/-**  
**(RAJENDRA)**  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 26/06/2018  
S.K.PS

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
ITAT, Mumbai