

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4668/MUM/2014
Assessment Year: 2005-06**

M/s Sai Sakti Developers & Builders Pvt. Ltd., Hotel Solitaire, New Sanjay Nagar, Parsiwada, Andheri Sahar Road, Andheri (E), Mumbai - 400099 PAN: AADCS0336B	Vs.	The Addl. Commissioner of Income Tax-8(3), Aaykar Bhavan, 2 nd Floor, Mumbai - 400021
(Appellant)		(Respondent)

Assessee by : Shri Kamlesh Kapadia (AR)
Revenue by : Shri V. Justin (DR)

Date of Hearing: 26/04/2018
Date of Pronouncement: 20/07/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 23.05.2014 passed by the Commissioner of Income Tax (Appeals)-18, Mumbai, for the assessment year 2005-06, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against penalty order passed u/s 271D of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that during survey action at the business premises of Sh. Narayan Gowda, director of the assessee company, a note on the letter pad of the assessee company was found, the contents of which are as under:

"I NarayanGowda (Director) of Sai Shakti Developers & Builders(P) Ltd. received cash of Rs. 10 lakhs (Ten lakh) on 25 .09.2004 from Mr. Subhash R Agarwal on the above said date.

*And against this amount I am giving two cheques No (1) 407591
Rs. 5 lakh (2) 407592 Rs. 5 lakh.....”*

3. On the basis of the said document penalty u/s 271D of the Act was levied on Narayan Gowda by Joint Commissioner of Income Tax range 21(3), Mumbai, for violating the provisions of section 269-SS of the Act by accepting cash loan of Rs.10,00,000/- from Mr. Subhash R Aggarwal. However, the ITAT Mumbai deleted the said penalty vide order dated 18.06.2010 passed in ITA No 1356/Mum/2007, holding that Shri Narayan Gowda received the cash in question in the capacity of director of M/s Sai Shakti Developers & Builders. Accordingly, the AO issued notice under section 274 r/w section 271D to the assessee company to explain as to why penalty should not be levied for accepting the amount in question in violation of section 269-SS of the Act. The assessee contended that the company did not receive any cash from Mr Subash Agarwal and there is no entry in the books of account of the assessee company therefore penalty cannot be levied for any violation. However, the AO rejecting the contention of the assessee levied penalty of Rs. 10,00,000/-under section 271D of the Act.

4. The assessee challenged the penalty order before the Commissioner of Income Tax (appeals). The Ld. CIT(A) after hearing the authorised representative of the assessee dismissed the appeal and confirmed the penalty levied by AO. Being aggrieved, the assessee is in appeal before the Tribunal.

5. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following effective ground:-

- 1. “Penalty of Rs. 10,00,000/- levied on the Appellant is bad in law and on facts and is required to be deleted.”*

6. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has wrongly confirmed the penalty levied by the AO. The learned counsel for the assessee further submitted that since the assessee company has not received any cash from Shri Subash Agarwal and there is no entry in the books of account of the assessee, the Ld CIT(A) ought to have deleted the penalty levied by the AO. Therefore, the impugned order is liable to be set aside.

7. On the other hand, the Ld. departmental representative (DR) relying on the order passed by the Ld. CIT(A) submitted that since the ITAT has deleted the penalty levied against Shri Narayan Gowda holding that he has received the amount in the capacity of director of the assessee company, the company is liable for violation of the provisions under section 269-SS of the Act.

8. We have heard the rival submissions and also carefully perused the material on record. We notice that the AO has initiated proceedings as per the information received from the DCIT, range 21(3) regarding violation of provisions of section 269-SS of the Act by the assessee company. Before us, the Ld. counsel contended that neither the assessee company had received any amount from Mr. Subash Agarwal nor there is any entry in the books of account of the company to establish that the company has violated the provisions of section 269-SS of the Act. On the other hand the Ld. DR did not point out any evidence on record to establish that the amount in question was received by the assessee company in violation of section 269-SS of the Act. So in our considered view in order to levy penalty for violation of section 269-SS it is necessary to establish that the assessee has accepted the amount in question in violation of the provisions of the said section. In the present case we do not find any cogent evidence to hold that the assessee company has received the amount in question in cash from Mr Subash Agarwal. Under these circumstances penalty under section 271D cannot be levied upon the assessee

company. However, in the light of the contention of the Ld. DR we restore this issue to the file of AO verification as to whether there is any entry regarding the amount in question in the books of account of the assessee company. We, accordingly allow the sole ground of appeal of the assessee for statistical purposes.

As a result, appeal filed by the assessee for assessment year 2005-2006 is allowed for statistical purposes.

Order pronounced in the open court on 20th July, 2018.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai