



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 159/CTK/2018

Assessment Year : 2013-2014

DCIT, Corporate Circle 1(1), Bhubaneswar.	Vs.	M/s. Akash Infra-com Project Pvt Ltd., MIG- II/183, Phase-II, Kanan Vihar, Bhubaneswar PAN No.AAICA 9736 A
(Appellant)	..	(Respondent)

Assessee by : Shri D.Parida/C.Parida, ARs
Revenue by : Shri Subhendu Datta, DR

Date of Hearing : 23/08/ 2018
Date of Pronouncement : 24 /08/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the revenue against the order of the CI(A)-1, Bhubaneswar dated 1.2.2018 for the assessment year 2013-2014.

2. The sole issue involved in this appeal is that the CIT(A) erred in deleting the penalty of Rs.1,70,00,000/- u/s.271D r.w.s. 269SS of the Act.

3. The facts of the case are that the Assessing Officer observed that the assessee had accepted loans of Rs.1,50,00,000/- in cash

from M/s. Laxmi Nrushingha Construction and Rs.20,00,000/- in cash from M/s. S.S.Parida totalling to Rs.1,70,00,000/- during the financial year 2012-13 in violation of the provisions of section 269SS of the Act. Accordingly, the Assessing Officer sent a proposal to the Addl.CIT for initiation of penalty proceedings u/s.271D of the I.T. Act. After rejecting the various explanations given by the assessee, the Addl.CIT held that the assessee has accepted the loan/deposit of Rs.1.70 crores in contravention of the provisions of section 269SS of the I.T. Act and therefore is liable for levy of penalty u/s.271D of the I.T. Act and hence, levied penalty of Rs.1,70,00,000/- u/s.271D of the Act.

4. On appeal, the CIT(A) deleted the penalty of Rs.1,70,00,000/- u/s.271D of the Act by observing as under:

" 4. I have considered the matter with reference to the facts on record. I do not agree with the assessee that since the amounts were received from sister concerns the transactions could not be called loan transactions. The transactions were clearly in the nature of loan and the assessee has made entries accordingly in its books of account. The assessee has contended that the amounts were received from the two sister concerns of the assessee to meet the assessee's urgent cash requirements at remote sites for labour payments and there was not enough time to make the transactions through bank. It is also argued that the main person to take decisions in financial matters in the case of the assessee and also in the cases of two sister concerns was the same person Sri S. S. Parida and Sri Parida was not aware of the provisions of section 269SS. The submission of the assessee appears to be correct. Moreover, the impugned loan transactions were all genuine

transactions and the AO had accepted the same as such. In its written submission, the assessee has referred to certain case laws which appear to support the case of the assessee. In the case of K. K. Enterprises v. JCIT reported in 41 Taxmann.com 235, the Hon'ble ITAT, Mumbai Bench held that an assessee accepting cash loan from a sister concern operating in the same premises and having common partners may be considered to have a reasonable cause for accepting the loans in cash and, therefore, entitled to the relief u/s.273B. In a very recent case of Sri Nikhil Banik Mazumdar v. JCIT, ITA Nos.453 ' & . 454/Kol/2016, the Hon'ble ITAT, Kolkata Bench vide their order dt.10.1.2018, have held that cash loans obtained from family members who have given the same by way of their support and help to the assessee cannot come within the purview of section 269SS. In the case of the assessee, the following facts are evident:

- i) The so-called loans in cash were obtained from two sister concerns who had enough cash in hand to do so.
- ii) Sri S. S. Parida as the managing director of the assessee company and the main partner of the two sister concerns was the person who was handling cash for all the 3 entities.
- iii) The amounts were taken in cash from the two sister concerns for making labour payments at far off places and there was an urgency to do so.
- iv) There was business expediency which compelled the assessee to accept the amount in cash.
- v) Sri S. S. Parida was not aware of the provisions of section 269SS.
- vi) Keeping in view the above facts and also relying on the decisions of various judicial authorities on the issue, it appears-that the assessee may be considered to have a reasonable cause for its failure to comply with the provisions of section 269SS. The assessee is, therefore, entitled to the benefit of section 273B. Hence, the penalty of Rs. 1,70,00,000/-imposed u/s. 271D is deleted."

5. Ld D.R. supported the order of the Addl. CIT and Id A.R. supported the order of the CIT(A).

6. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the assessee received unsecured loans of Rs.1.70 crores from its two sister concerns. The said loans were accepted as genuine after verification by the Assessing Officer in an assessment made u/s.143(3) of the Act vide order dated 29.3.2016. Thereafter, the Assessing Officer levied penalty u/s.271D of the Act for violation of provisions of section 269SS of the Act by accepting loan exceeding Rs.20,000/- in cash.

7. On appeal, the CIT(A) deleted the penalty by following the decisions of Mumbai Benches of the Tribunal in the case of K.K.Enterprises (supra) and Kolkata Benches of the Tribunal Sri Nikhil Banik Mazumdar (supra).

8. We find that the Hon'ble Jharkhand High Court in the case of [Engineers vs CIT](#), 294 ITR 599 has held as under:

"This case law also comes to the rescue of the assessee. In the aforesaid decision it has been held that "Held, that there was no finding of the assessing authority, the appellate authority or the Tribunal that the transaction made by the assessee in breach of the provisions of section 269 SS was not a genuine transaction. On the contrary, the return filed by the assessee was accepted after scrutiny under section 143(3) of the Act. Further, there was

no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was accepted after scrutiny under section 143(3) of the Act. Further, there was no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was mala fide and with the sole object to conceal money. Consequently, penalty imposed under section 271D merely on technical mistake committed by the assessee, which had not resulted in any loss of revenue, was harsh and could not be sustained in law."

9. The Hon'ble P&H High Court in the case of [CIT vs Saini Medical Store](#) [2005] 277 ITR 420 has held as under :-

"6.2. As pointed out earlier, there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment made for the year under consideration. Even if, there is any ignorance, which resulted in the infraction of law, the default is technical or venial which did not prejudice the interests of the Revenue as no tax avoidance or tax evasion was involved. To my mind, bona fide belief coupled with the genuineness of the transactions would constitute reasonable cause u/s 273B for not invoking the provisions of Section 271E of the Act. The impugned order of penalty is cancelled."

5.3. In the background of aforesaid discussion and precedents we hold that the assessee was not liable for penalty u/s 271D. Hence we direct that the penalty be deleted."

10. The Hon'ble Punjab and Haryana High Court also in the case of CIT Vs. Sunil Kumar Geol, 315 ITR 163 held as under:

In this case, the assessee has taken loan in cash on seven "occasions, during the financial year 1990-91 (Asstt.Year 1991-92). The Id.AO has initiated penalty proceedings under [section 271D](#) of the Income Tax Act. The assessee contended that on account of his bona fide needs, he has taken loans, but his contention was rejected by the AO and penalty was imposed. Appeal to the Id.CIT(A) did not bring any relief to the assessee. However, on further appeal, the Tribunal has deleted the penalty. Revenue ITA No.397 and 398/Ahd/2016 took the matter to the Hon'ble High Court and contended that imposition of penalty under [section 271D](#) is mandatory, if an assessee has violated [section 269SS](#) of the Act is concerned. The Hon'ble High Court has rejected the appeal of the Revenue and observed that

during the course of penalty proceedings, the assessee has produced his cash book depicting loan taken by him. The transaction of the assessee was not doubted. It is found to be genuine. Hon'ble High Court further observed that these transactions were between family and due to business exigency, there was no mala fide intention at the end of the assessee for evading taxes. The Tribunal has made reference to background in which [sections 269SS](#) and [269T](#) were introduced in the Act. Thus, according to this decision, if an assessee has demonstrated bona fide of the transaction and business exigency for taking cash loans, then on account of this technical breach, he would not be visited with penalty."

11. Thus, on a reading of the above quoted decisions of Hon'ble P&H High Court, we find that no penalty u/s.271D can be levied on an assessee where the loans have been accepted in an assessment u/s.143(3) of the Act made by the Assessing Officer as genuine. We find that in the instant case, in an assessment u/s.143(3) of the Act, the Assessing Officer has accepted the loan as genuine and, therefore, above quoted decisions of Hon'ble Jharkhand High Court and Hon'ble P&H High Court squarely apply to the facts of the assessee's case. Hence, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground o the revenue is dismissed.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 24 /08/2018.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 24/08/2018
B.K.Parida, SPS



Copy of the Order forwarded to :

1. The Appellant : DCIT, Corporate Circle 1(1),
Bhubaneswar
2. The Respondent. M/s. Akash Infra-com
Project Pvt Ltd., MIG-II/183, Phase-II,
Kanan Vihar, Bhubaneswar.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**