

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos.2194 to 2197/CHNY/2018.

निर्धारण वर्ष /Assessment years : 2014-2015 & 2015-2016.

M/s.Vasan Healthcare P. Ltd, Vs. The Addl. Commissioner of
Fourth floor, Income Tax,
Lancor West Minister, Central Range 2,
No.70, Dr.Radhakrishnan Salai, Chennai.
Mylapore, Chennai 600 004.
[PAN AACCV 7028E]

आयकर अपील सं./I.T.A. Nos.2198 to 2205/CHNY/2018.

निर्धारण वर्ष /Assessment years : 2012-2013 to 2015-2016.

M/s.Vasan Medical Centre Vs. The Addl. Commissioner of
(India) P. Ltd, Income Tax,
15A, Thillainagar Central Range 2,
Tiruchirapalli 620 018. Chennai.
[PAN AADCV 3057G]
(Petitioner) **(प्रत्यर्थी/Respondent)**

Petitioner by : Shri.S. Sridhar, Advocate
Respondent by : Dr.Srinivasa Rao, CIT D.R

सुनवाई की तारीख/Date of Hearing : 12-11-2018
घोषणा की तारीख /Date of Pronouncement : 26-11-2018

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER

ITA Nos.2194 to 2197/Chny/2018 are appeals filed by the assessee in the case of M/s. Vasan Healthcare P. Ltd and ITA Nos.2198 to 2205/chny/2018 are appeals filed by the assessee in the case of M/s. Vasan Medical Centre (India) P. Ltd.

Since both assessee's are related parties and the issues in all these appeals are inter-connected, these appeals are disposed off through a common order.

2. ITA Nos.2194 & 2196/Chny/2018 for assessment years 2014-15 & 2015-16 are the appeals against the common order of Ld.CIT(A) in ITA Nos.265 & 266/17-18 dated.25.06.2018, and ITA Nos.2198, 2200, 2202 & 2204/Chny/2018 for assessment years 2012-13 & 2015-16 are directed against the common order of Ld.CIT(A) in ITA Nos.259 to 262/17-18 dated 25.06.2018 confirming the levy of penalty u/s.271D of the Act made by Id. Assessing Officer.

2.1 ITA Nos.2195 & 2197/Chny/2018 for assessment years 2014-15 & 2015-16 are the appeals against the common order of Ld.CIT(A) in ITA Nos.263 & 264/17-18 dated.25.06.2018, and ITA Nos.2199, 2201, 2203 & 2205/Chny/2018 for assessment years 2012-13 & 2015-16 are directed against the common order of Ld.CIT(A) in ITA Nos.255, 256, 257 & 258/17-18 dated 25.06.2018 confirming the levy of penalty u/s.271E of the Act made by Id. Assessing Officer.

3. Shri S.Sridhar represented on behalf of the Assessee, and Dr.Srinivasa Rao represented on behalf of the Revenue.

4. The facts in all the appeals are identical and consequently, it was submitted by Id.A.R that in regard to levy of penalty u/s.271D of the Act, the appeal in ITA No.2198/Chny/2018 can be taken as a sample and in regard to levy of penalty u/s.271E of the Act, the appeal in ITA No.2199/Chny/2018 can be taken as a sample.

ITA No.2198/Chny/2018 –Sec.271D

5. Ld. Counsel for the assessee submitted that the assessee is a company. It was a submission that there was a search conducted at the premises of one Shri J. Dinakaran, who was doing the business of finance. Consequent to the search in the case of Shri J. Dinakaran, a search was conducted in the case of assessee and Dr. A.M Arun, who is one of the promoter shareholders and Director of the assessee companies and who had received loans in cash from Shri J. Dinakaran and given the same to the assessee company. It was submitted by Id.A.R that the Id. Assessing Officer had held that there was a violation of provisions of the section 269SS of the Act in so far as the cash loans had been received by the assessee company from its Director, Dr. A.M Arun. It was a submission that a show-cause notice was issued to the assessee and the assessee had responded that the assessee had not dealt with Shri J. Dinakaran and the transactions were only with its Director, Dr. A.M Arun. It was a submission that Dr. A.M Arun had borrowed the monies in his individual capacity, and introduced the same through his running account with the assessee company for the purpose of meeting business exigencies. It was a further submission that the assessee company having been promoted by Dr. A.M Arun, and as the assessee company was undergoing various financial crunches and economic downturn, to meet the various emergency requirements, such as the expenses of the company in the form of monthly salary to the employees, doctor professional fees and rental payments and statutory payments etc., at various branches, the cash was taken by Dr. A.M Arun as a loan from Shri J. Dinakaran and funds introduced in cash in the bank account of the assessee during the first week

of the month. Similarly, during the last week of the month also, for the purpose of repayment of loans, which fall due, Dr. A.M Arun would take cash loans from Shri J. Dinakaran and deposit it in the bank account of the assessee company, from which various expenses have been met. Ld.A.R drew our attention to page-2 of the penalty order, wherein the reply of the assessee has been extracted. It was a submission that the detailed statement of the amounts received by the assessee company has been produced before the A.O. It was a submission that the detailed statement of the amounts received by the assessee company from Dr. A.M Arun and the utilization of the same between various payments and repayments of the loans were produced before the Id. Assessing Officer. It was a submission that the assessee company never paid Dr. A.M Arun any interest. It was a submission that prima facie the assessee had shown the reasonable cause for taking the funds in cash from Dr. A.M Arun, who had in turn taken the loan in cash from Shri J. Dinakaran. It was a submission that the fact that the assessee has not paid any interest to Dr. A.M Arun, clearly showed that the transaction between the assessee and the Dr. A.M Arun was in the form of running account. It was a submission that Dr. A.M Arun would withdraw the cash from the assessee company's current bank account and repay the same to Shri J. Dinakaran. It was a submission that the assessee being a company, could not take a loan from Shri J. Dinakaran directly as taking of the loan was specifically barred from individuals. It was a submission that the assessee had shown reasonable cause for taking of the cash from Dr. A.M Arun and in view of the provisions of the section 273B of the Act, penalty levied u/s.271D was not exigible and the same was liable to be deleted.

5.1 It was an alternate prayer that the total of the transactions in cash between the assessee and Dr. A.M Arun, the Director of the assessee company was to meet the expenditure of ₹143.25 cores, but the peak of the cash deposits was only ₹22.2 crores, being the maximum amount outstanding at any point of time for the three years. It was a submission that if the assessee's prayer for its reasonable cause is not acceptable, then the penalty may be restricted to the peak of the cash deposits. It was a further submission by the Id.A.R that monies had been taken on loan by Dr. A.M Arun from Shri J. Dinakaran and given to the assessee. In the same manner on the repayment of the loan by Dr. A.M Arun to Shri J. Dinakaran, the monies had been drawn in cash from the accounts of the assessee and paid to Shri J. Dinakaran. Consequently, penalty u/s.271D of the Act has been levied on the assessee-companies for taking the loan in cash from its Director, Dr. A.M Arun and penalty u/s.271E of the Act has been levied for repayment of the said loan by the assessee-companies to Dr. A.M Arun. Penalty u/s.271D of the Act has been levied on Dr. A.M Arun also for taking this loan in cash from Shri J. Dinakaran and penalty u/s.271E of the Act has been levied for the repayment of the loan to Shri J. Dinakaran by Dr. A.M Arun. It was a submission that thus, on this peak cash loan of 22.3 crores taken by Dr. A.M Arun from financier, Shri J. Dinakaran for grave emergency purposes for business and the repayment of the same resulting in an aggregate transactions amounting to nearly ₹143 crores, penalties under sections 271D and 271E of the Act have been levied on Dr. A.M Arun and the assessee-company resulting in demand of more than ₹570 crores [i.e. 4 x 143].

5.2 It was a submission that the penalties in the case of Dr. A.M Arun were pending in separate proceedings, and only penalties in the case of assessee-companies were before the Bench, now. The Id.A.R read through the assessee's explanation given before the Id. Assessing Officer as extracted in the penalty order. It was a submission that the Id. Assessing Officer by relying upon the decision of the Hon'ble jurisdictional High Court in the case of Nandhi Dhall Mill Vs. CIT reported in [2015] 373 ITR 510, as also the decision of Hon'ble jurisdictional High Court in the case of P.Muthukaruppan Vs. JCIT reported in 375 ITR 243(Mad.), held that the assessee was liable to pay the penalty u/s.271D of the Act. It was a submission that on appeal, before the Id.CIT(A) the assessee had also relied upon the decision of the Hon'ble jurisdictional High Court in the case of CIT Vs.Idhayam Publications Ltd., reported in [2006] 285ITR 221(Mad.) wherein the Hon'ble Madras High Court had held that the director having deposited funds in the form of cash in the current account of an assessee-company and also withdrawing the same from the current account, the same cannot be treated as loan or deposit. It was a submission that the Ld.CIT(A) without considering any of the explanation submitted by the assessee, confirmed the levy of penalty u/s.271D of the Act. It was a submission that provisions of the section 271D clearly shows that the same was for contravention to provisions of the section 269SS and perusal of the provisions of the section 269SS showed that it was under Chapter-XXB of the Income Tax Act, 1961, which was for the purpose of "counteracting evasion of tax". It was a submission that there was no unaccounted transactions in the present case and in fact, no additions on account of unaccounted transactions have been made in the case of assessee-companies, or in the case of Dr. A.M Arun. It was a submission that all the transactions were genuine and accounted transactions, the details have also been produced before the Id. Assessing

Officer also and it was only under exigency circumstances and on account of commercial expediency, which required cash for meeting the immediate and emergency short fall of funds in the case of assessee-company, the loans had been taken in cash by the Director of the assessee-company from Shri J. Dinakaran and deposited in the current account. It was a submission that the assessee company was unable to draw any further loan towards its working capital as all its resources were completely strained and if this cash loan had not been taken by Dr. A.M Arun for the purpose of meeting emergency financial requirements of the assessee company, the assessee-company would have gone into liquidation itself. It was a prayer that the penalty levied under section 271D may be deleted.

6. In reply, Id.D.R submitted that a search was conducted in January, 2015 in the case of Shri J. Dinakaran, who was a money lender in Chennai. The assessee being one of the Vasan Group companies, had been searched in December, 2015, and it is based in Trichy. It was a submission that the claim that the assessee that it is having a running account with its Director, is not correct in so far as no commercial transactions have been routed through this account. It was a submission that the said account was a channel for meeting the expenses of the assessee company from unaccounted sources, or from channels, which are not sanctioned by law. It was a submission that the assessee company admittedly cannot borrow from private individuals, unless it is sanctioned by necessary regulatory authorities. It was a submission that thus, the submission that the transactions between the assessee and its director Dr. A.M Arun was a running account, is not correct, but it was a loan account between the assessee

company and the director and provisions of the section 269SS did apply and the violations of the same had rightly led to levy of penalty u/s.271D of the Act. The Id.D.R drew our attention to the provisions of the section 269SS of the Act to say that the question of peak credit would not apply in so far as the said provisions did not provide for the same. It was a submission that if the assessee had already taken a cash loan of ₹15,000/- on one occasion and on subsequent occasion taken another ₹5,000/- in cash, then the provisions of the section 269SS stood violated and provisions of the section 271D of the Act was exigible. Ld.D.R drew our attention to the provisions of the section 269SS(c) to say that the words used were "the amount or the aggregate amount referred to clause (a) or (b)". It was a submission that each transaction was to be considered not individually, but in aggregate and thus, the alternate prayer of the assessee in respect of the peak credit of the loans could not be agreed to. It was a further submission that the claim of assessee that the director of the assessee company, Dr. A.M Arun has been penalized for the same amount, and therefore, the assessee company should not be penalized, would not be acceptable in so far as the company is a different entity from Dr. A.M Arun, who is an assessee in his individual capacity. It was a submission that nothing has been brought on record to show that Dr. A.M Arun had taken the loan from Shri J. Dinakaran on behalf of the assessee company, or that Dr. A.M Arun acted on behalf of the assessee company. The Revenue was absolutely correct in levying the penalty under sections 271D and 271E of the Act in respect of the assessee for having taken the loans and repaid the loans from and to Dr. A.M Arun respectively and Dr. A.M Arun for having levied penalty u/s.271D & u/s.271E of the Act in respect of taking loan in cash, and repaying the loan in cash to Shri J. Dinakaran respectively. It was a submission that offence of both the assessee company and Dr. A.M

Arun was separate and independent and was to be considered independently. It was a submission that the penalty has not been levied for the same offence, but has been levied on the same amount. The Id.D.R. drew our attention to the penalty order at pages 7 & 8 to submit that in para-2, the Id. Assessing Officer has categorically stated that the assessee has not done day to day matching of the receipts and expenses and the cash flow submitted in respect of end-use of the cash loans taken lack clarity. It was a submission that thus, the submission that the claim on reasonable cause made by the assessee was also unsubstantiated. It was a submission that the penalty as levied by the Id. Assessing Officer and confirmed by the Ld.CIT(A) relying upon the decision of Hon'ble jurisdictional High Court in the case of P.Muthukaruppan Vs. JCIT referred to supra, was liable to be upheld.

7. In reply, the Id.A.R submitted that Shri J. Dinakaran is an unconnected third party and the assessee company could not take a loan as it did not have necessary security for taking the loan. It was a submission that the decision relied upon by the Id. Assessing Officer and the Ld.CIT(A) was not applicable in so far that assessee in those cases, the cash loans had been taken from unconnected persons and the transactions were also completely unaccounted. In the assessee's case, it was submitted that none of the transactions were unaccounted and no addition on account of any allegation of unaccounted transactions has been made in the case of assessee, or Dr. A.M Arun and the decision relied upon in the case of CIT Vs.Idhayam Publications Ltd. referred to supra applied to the transactions between the assessee and its director, who was also the promoter shareholder and who had deep interest in the assessee company, and its

survival and on account of the fact that no interest has been charged. It was submitted that penalty was not exigible u/s.271D of the Act.

Section 271E of the Act.

8. In respect of penalty levied u/s.271E of the Act, it was submitted by Id.A.R that the penalty has been levied on account of the withdrawal in cash by Dr. A.M Arun for the purpose of repayment to Shri J. Dinakaran in respect of loan taken by Dr. A.M Arun on behalf of the assessee company. It was a submission that Dr. A.M Arun has also been penalized for repayment of the loan and clearly the penalty has been levied multiple times for the same amount. It was a submission that the provisions of the section 269SS and 269T of the Act was for the purpose of curtailing unaccounted transactions whereas in the present case, the transactions were fully accounted and had been done only on account of commercial exigencies. It was a submission that as the amounts had been taken in cash by Dr. A.M Arun from Shri J. Dinakaran, the same had to be repaid in cash itself, as that was the condition under which the loans had been taken by Dr. A.M Arun from Shri J. Dinakaran. It was a submission that consequently the funds had been withdrawn from assessee's bank account for the repayment of the loan by Dr. A.M Arun to Shri J. Dinakaran.

9. In reply, the Id.D.R submitted that nothing has been brought on record to justify the repayment of the loan in cash. It was a submission that the prayer of the Id.A.R that the penalties under sections 271D & 271E of the Act was liable to be deleted and it was replied by Id.D.R that the penalties as levied by the Id. Assessing Officer and confirmed by the Ld.CIT(A), were liable to confirmed.

10. To examine as to whether there has been any additions in the course of assessments on account of the alleged unaccounted transactions in respect of the said funds deposited in the assessee's bank account by Dr. A.M Arun, or in respect of the transactions wherein Dr. A.M Arun has withdrawn funds for repayment to financier Shri J. Dinakaran, the Id.D.R was directed to produce the copy of assessment orders in the case of both the assessee herein, as also the assessment orders in the case of Dr. A.M Arun for the relevant period. The Id.D.R was also directed to produce the copy of assessment orders in the case of financier Shri J. Dinakaran for the relevant period. On 13.11.2018, the assessee produced before us the copy of assessment orders passed u/s.143(3) r.w.s.153C r.w.s.153A of the Act for assessment years 2014-15 & 2015-16 in the case of M/s. Vasan Healthcare P. Ltd., and the assessment orders passed u/s.143(3) r.w.s.147 for assessment years 2012-13, 2013-14, 2014-15 & 2015-16 in the case of M/s. Vasan Medical Centre (India) P. Ltd., as also the assessment orders u/s.143(3) r.w.s.153A of the Act for assessment years 2012-13,2013-14,2014-15

& 2015-16 in the case of Dr. A.M Arun along with the copy of Memorandum of Association of both the assessee herein i.e. M/s. Vasan Healthcare P. Ltd. and M/s. Vasan Medical Centre (India) P. Ltd. The assessee has also placed before us the break-up of the cash received from Dr. A.M Arun in the books of M/s. Vasan Healthcare P. Ltd. and M/s. Vasan Medical Centre (India) P. Ltd., as also the utilization of the amounts received from Dr. A.M Arun, which had been filed before the Id. Assessing Officer. The Id.D.R placed before us a copy of the search assessment order passed u/s.143(3) r.w.s.153B of the Act for assessment years 2012-13, 2013-14, 2014-15 and 2015-16 in the case of Shri J. Dinakaran.

11. We have considered the rival submissions. We have perused the Assessment Orders in the case of two assessee herein as also Assessment Orders in the case of Dr.A.M.Arun and Shri J.Dinakaran. We have also perused the details produced before the AO in respect of the cash payment made by Dr.A.M.Arun to the two assessee's herein. The utilization details given before the AO shows break-up of the purposes for which the amount received from Dr.A.M.Arun has been used. The first page of the cash flow chart is attached herewith as follows:

| Utilization of Payment of amount received from Dinakaran | | | | | | | | | | | | | |
|--|-------------------------------|----------------------------|-------------------------------|------------------|----------------------------|----------------------------|-----------------------|-------------------|-------------|---|-------------------------|------------------------|----------------|
| Date | Amount received by Dr.AM Arun | Banks/NBFC-loan repayments | Vasan Denta 1 Hospital salary | Employees salary | Doctor's Professional fees | Critical Vendor's payments | Hospital rent payment | Statutory payment | Total | Opening Bank Balance including Operational Cash Balance | Amount received from JD | Total all Bank Balance | Total payments |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 3-Jan.12 | 1,200,000 | - | - | -- | - | - | - | - | - | 15,943,936 | 1,200,000 | 17,143,936 | 17,048,320 |
| 4-Jan.12 | 700,000 | - | - | -- | - | - | - | - | - | 11,378,596 | 700,000 | 12,078,596 | 3,430,639 |
| 5-Jan.12 | 1,100,000 | - | - | 10,239,034 | 38,08,734 | - | - | - | 48,322,771 | 41,861,189 | 1,100,000 | 42,961,189 | 124,020,848 |
| 9-Jan.12 | 2,500,000 | - | - | - | - | - | 4,467,535 | - | 4,467,538 | 22,714,672 | 2,500,000 | 25,214,674 | 10,829,391 |
| 10-Jan.12 | 1,500,000 | - | - | - | - | - | - | - | - | 20,801,266 | 1,500,000 | 22,301,266 | 12,238,531 |
| 11-Jan.12 | 1,500,000 | 5,400,000 | - | - | - | - | - | - | 5,400,004 | 17,681,597 | 1,500,000 | 19,181,597 | 12,255,115 |
| 12-Jan.12 | 9,000,000 | 5,400,000 | - | - | - | - | - | - | 5,400,005 | 11,698,241 | 9,000,000 | 20,698,241 | 19,582,749 |
| 13-Jan.12 | 7,500,000 | 10,700,000 | - | - | - | - | - | - | 10,700,006 | 13,476,130 | 7,500,000 | 20,976,130 | 12,107,890 |
| 14-Jan.12 | 1,500,000 | 15,548,905 | - | - | - | - | - | - | 15,548,912 | 13,491,099 | 1,500,000 | 14,991,099 | 29,017,357 |
| 18-Jan.12 | 4,882,519 | 6,775,000 | - | - | - | - | - | - | 6,775,008 | 19,194,663 | 4,882,519 | 24,077,182 | 23,274,832 |
| 19-Jan.12 | 10,951,511 | 10,800,000 | - | - | - | - | - | - | 10,800,00-9 | 23,661,823 | 10,951,511 | 34,613,334 | 29,177,941 |
| 19-Jan.12 | - | -- | - | - | - | - | - | - | - | - | -- | - | - |
| 20-Jan.12 | - | 5,400,000 | - | - | - | - | - | - | 5,400,010 | 16,548,764 | -- | 16,548,764 | 31,013,144 |
| 21-Jan.12 | 1,350,000 | 4,913,438 | - | - | - | - | - | - | 4,913,449 | 20,863,414 | 1,350,000 | 22,213,414 | 19,328,993 |
| 11-Jul.12 | 700,000 | 8,660,040 | - | - | - | - | - | - | 8,660,052 | 43,911,298 | 700,000 | 44,611,298 | 33,133,406 |
| 12-Jul.12 | 1,200,000 | - | - | 508,488 | - | - | - | - | 508,501 | 44,119,189 | 1,200,000 | 45,319,189 | 29,258,914 |
| 12-Jul.12 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 13-Jul.12 | 4,400,000 | - | - | - | - | 4,596,233 | - | - | 4,596,247 | 35,774,811 | 4,400,000 | 40,174,811 | 27,230,560 |
| 14-Jul.12 | 1,200,000 | - | - | 1,611,508 | - | - | - | - | 1,611,523 | 27,370,177 | 1,200,000 | 28,570,177 | 33,047,512 |
| 14-Jul.12 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 16-Jul.12 | 4,600,000 | - | - | - | - | 3,663,498 | - | - | 3,663,514 | 35,001,845 | 4,600,000 | 39,601,845 | 40,959,307 |
| 17-Jul.12 | 16,700,00 | - | - | - | 3,926,657 | - | - | 331,231 | 4,257,905 | 24,709,560 | 16,700,000 | 41,409,560 | 38,571,855 |
| 18 Jul 12 | - | - | - | - | 3,793,938 | - | - | 214,067 | 4,008,025 | 24,440,754 | - | 24,440,754 | 38,196,538 |
| 20 Jul 12 | - | 6,758,288 | - | - | - | - | - | - | - | - | - | 23,908,567 | 30,334,515 |
| 25 Mar 13 | 3,200,366 | 8,355,450 | - | - | - | - | - | - | 8,355,472 | 32,797,055 | 3,200,366 | 35,997,421 | 34,346,258 |
| 26 Mar 13 | 1,000,000 | - | - | - | - | - | - | - | - | 15,789,039 | 1,000,000 | 16,787,039 | 26,700,698 |
| 27 Mar 13 | 1,655,375 | - | - | - | - | - | - | - | - | 21,712,350 | 1,655,376 | 23,367,726 | 14,156,607 |
| 28 Mar 13 | 700,000 | 1,540,460 | - | - | - | - | - | - | 1,540,483 | 15,944,962 | 700,000 | 16,644,962 | 33,478,156 |
| 28 Mar 13 | - | - | - | - | - | - | - | - | - | - | - | - | - |
| 30 Mar 13 | 2,799,367 | 13,933,362 | - | - | - | - | - | - | 13,933,386 | 82,984,452 | 2,799,367 | 85,783,819 | 77,385,856 |
| 31 Mar 13 | - | 8,000,000 | - | - | - | - | - | - | 8,000,025 | 27,631,869 | - | 27,631,869 | 1,846,530 |
| 3 Apr 13 | - | - | - | - | - | - | - | - | - | 73,704,091 | - | 73,704,091 | 199,781,524 |
| 4 Apr 13 | - | - | - | - | - | - | - | - | - | 151,959,631 | - | 151,959,631 | 16,827,794 |

:14:

12. A perusal of the cash flow statement produced shows the amount received by Dr.A.M.Arun on various dates and the payments made on the various dates. For example, amounts had been taken on 3rd January, and 4th January of ₹12.00 lakhs and ₹7.00 lakhs respectively, when the assessee had ₹1.59 Cr bank and cash balance on 3rd January. On 5th January another ₹11.00 lakhs has been taken and on 11th January there is a total outflow of ₹1.40 Cr. Now, when the assessee itself had opening bank balance of ₹4.59 Cr., what was the necessity to take this cash deposit of nearly ₹30.00lakhs between 3rd January and 5thJanuary for meeting an expenditure of ₹1.40 crores. Here, one thing that is conspicuous is that the total amount mentioned in column No.10 talks of ₹4.83 Cr. This total is unsubstantiated. At first blush, the perusal of the cash flow gives the impression that there is a massive expenditure of ₹4.83 Cr. and therefore, there is necessity to take this cash, failing which there would be a negative cash balance. Now taking the next transaction on 9th January, there is another ₹25.00 lakhs cash taken and ₹44.67 lakhs rent payment is mentioned. The opening bank balance as on 5th January is ₹4.18 Cr., from this, we reduced the cash taken earlier of ₹30.00 lakhs, then we are still left with ₹3,88,61,000/- and after reducing the expenses as on 5th January of ₹1.40 Cr., there is still a balance of ₹2.48 Crs., which clearly does not justify the requirement of taking the cash of ₹25.00 lakhs from Dr.A.M.Arun. Thus, cash flow produced by the assessee itself goes against the claim of the assessee for its reasonable cause. Perusal of 5th January, 2012,

opening cash & bank shows ₹4.18 Crs. Cash Receipts of Rs.11.00 lakhs and total closing balance of Rs.4.29 Crs. and total expenses of Rs.12.40 Crs. How this ₹12.40 Crs. was met, is not coming out of the cash flow. What is the nature of the ₹12.40 Crs expenditure? Thus, the cash flow submitted itself is questionable. Thus, the claim of reasonable cause of the assessee clearly stands unsubstantiated. It is true that if the assessee really needs emergency funds for business exigencies, taking of cash can be considered as a reasonable cause but that has not been established here, clearly. In fact, the cash flow produced by the assessee clearly negates the claim of business exigencies raised by the assessee. The search Assessment Order in the case of the assessee herein as also search Assessment Order in the case of Dr.A.M.Arun which had been submitted by the Ld.AR, though the same was requested from the Ld.DR clearly negates the arguments of the Ld.DR that the amounts were taken by Dr.A.M.Arun for the purpose of assessee to meet the unaccounted expenses of the assessee. In fact, in neither of the Assessment Orders, is there any addition on account of unexplained investments or unaccounted funds/expenses. The demands are on account of disallowances of expenditure. However, a perusal of the search assessment order in the case of Shri J.Dinakaran as submitted by the Ld.DR at the behest of the bench shows that certain unaccounted income is being assessed in the hands of Shri J.Dinakaran. The assessment seems to have been made on the basis of re-worked notional balance sheet and statement of affairs prepared from the seized records. The Assessment Order of Shri J.Dinakaran makes a

mention of the loan given to Dr.AM.Arun at Page No.4 Para No.4 of the Assessment Order, specifically the Assessment Order in the case of Shri J.Dinakaran for the AY 2015-16. Thus, unaccounted incomes in respect of these loan transactions have been traced as unaccounted income of Shri J.Dinakaran. Thus, what becomes clear from the above facts is that the unaccounted cash of Shri J.Dinakaran has been routed through Dr.A.M.Arun, deposited into the accounts of the two assessee herein, laundered and then withdrawn by Dr.A.M.Arun and returned to Shri J.Dinakaran.

13. The provisions of Sec.269SS and 269T are under Chapter XX-B of the Income Tax Act to counteract the evasion of tax. This is exactly what has been done in so far as the unaccounted income of Shri J.Dinakaran has been used for the business purposes of the assessee herein though not proved and alleged to have been returned back.

14. A perusal of the decision of the Hon'ble Jurisdictional High Court in the case of Nandhi Dhall Mills v. CIT reported [2015] 373 ITR 510 shows that though several documents have been submitted by the assessee, there was nothing to show that there was urgency for the assessee to avail the loan in violation of sec.269SS and the AO had given detailed reasoning why he found that such a transaction would not come under the exception clause of Sec.271D. In the said case, the AO had categorically given a finding that the submission of the assessee

was that the loans have been taken in cash for the purpose of depositing in the assessee's bank account for drawing Demand Drafts in the name of the creditors was false, in so far as, all the creditors were regular suppliers of the assessee and the assessee had made frequent credit purchases. In the present case also the A.O has rejected the assessee's explanation in respect of the cash flow by saying that it lacks clarity. However, as mentioned earlier, a perusal of the cash flow clearly shows that the cash was not required to be taken and the assessee had adequate funds available with it to meet its requisite expenditure.

15. A perusal of the decision in the case of Shri P.Muthukaruppan v. JCIT reported in 375 ITR 243 [Madras] shows that the Hon'ble Jurisdictional High Court had held that the entire transaction between the assessee, a financier, and the financier who was also financing a large number of persons was apparently to evade tax which came to light after a survey was conducted and some documents on records were seized. The assessee, in that case, had not given any satisfactory explanation nor appeared before the AO. In the present assessee's case also the unaccounted cash of Shri J.Dinakaran has been pumped into the business of the assessee company through its promotersshareholder and director, Dr.A.M.Arun. The explanation of reasonable cause being business exigencies also has not being supported with evidence and, in fact, the cash flow submitted by the assessee negates the claim of business exigency.

16. A perusal of the decision of the Hon'ble jurisdictional High Court in the case of M/s.Idhayam Publications Ltd., reported in 285 ITR 221 (Madras) relied upon by the assessee shows that a Private Ltd. Company had received cash from its Director. Consequently, the Hon'ble Jurisdictional High Court had given a finding that deposit/withdrawal of the money from the current account could not be considered as a loan or advance. In the present assessee's case, herein, Dr.A.M.Arun admittedly is one of the promoter shareholder and director of the assessee companies. But the cash which has been deposited in the bank account of the assessee companies, is not that of Dr.A.M.Arun, the shareholder and director. Dr.A.M.Arun allegedly has deposited the cash in the various bank accounts of the assessee companies maintained with the City Union Bank. The cash has been obtained by Dr.A.M.Arun from Shri J.Dinakaran. The fact that Dr.A.M.Arun deposited the cash in the bank account of the two assessee companies herein itself puts into question the issue of reasonable cause. This is not a case where Dr.A.M.Arun has taken the cash from Shri J.Dinakaran and used the cash for the purpose of the business requirements of the assessee company in cash. This is a case where the cash taken by Dr.A.M.Arun from Shri J.Dinakaran has been deposited in the bank account of the assessee companies and that money is alleged to have been used for the business of the assessee companies, though not proved with the cash flow. If Dr.A.M.Arun was depositing cash into the bank accounts of the assessee, it would have been easier for him to deposit the cash into his bank account and transfer it to the assessee companies. What

stopped Dr.A.M.Arun from depositing the said cash in his bank account and then transferring it by bank transfer to the bank account of the assessee companies? Today, same bank, money transfer takes less than a few seconds and even if it is in different banks, bank transfer would take the maximum time of two to three hours. The cash flow shows that the money deposited in cash on a particular day and the expenditure coming after more than two days. This being so, along with the fact that the moneys deposited by Dr.A.M.Arun in the assessee's bank account were unaccounted cash of Shri J.Dinakaran shows that the decision in the case of M/s.Idhayam Publications Ltd., are not applicable to the facts of the assessee's case. Thus, the assessee has failed to prove with reasonable cause, the reason for the receipt of cash from Dr.A.M.Arun in violation of the provisions of Sec.269SS leading to the consequential levy of penalty u/s.271D of the Act.

17. When the language of the provision is crystal clear, the object of the purpose of the enactment of the said provision would no more have any say in the matter. A plain reading of Sec.271D establishes that it is a mandatory provision and a person contravening the provisions of Sec.269SS of the Act in any manner cannot escape from the payment of the penalty of equivalent amount so received as loan or deposit by him, unless exceptional and reasonable cause is proved. It is a well settled principle of interpretation that the taxing statutes have to be construed strictly and that when the language is clear and unambiguous it

has to be construed in the literal sense bereft of any equitable or social reasons or any hardship likely to be suffered.

18. Thus, as the assessee has not been able to substantiate its claim for receiving amounts in cash from Dr.A.M.Arun in violation of provisions of Sec.269SS, the penalty levied u/s.271D of the Act as levied by the Addl. Commissioner and as confirmed by the Ld.CIT(A) stands confirmed. The decision of the Hon'ble jurisdictional High Court in the case of M/s.Idhayam Publications Ltd., referred to supra, has no application on the facts of the present case and the principles laid down by the Hon'ble Jurisdictional High Court in the case of Shri P.Muthukaruppan, referred to supra, and Nandhi Dhall Mills, referred to supra, have been rightly applied by the Addl. Commissioner and the Ld.CIT(A).

19. Coming to the penalty levied u/s.271E of the Act, the admitted fact remains that cash has been deposited into the bank account of the assessee herein. The funds having been routed through the bank accounts, why was the same withdrawn in the cash for repayment to Dr.A.M.Arun and subsequently to Shri J.Dinakaran is not explained. What stop the bank transfer of the funds from the assessee's bank account to the bank accounts of Dr.A.M.Arun and consequent transfer to Shri J.Dinakaran. The Assessment Order in the case of Shri J.Dinakaran gives the picture that the moneys were the unaccounted cash of Shri J.Dinakaran and it was Shri J.Dinakaran's unaccounted cash which was

laundered through the accounts of the two assessee herein. In short, the assessee herein has been used as the custodian of the unaccounted cash of J. Dinakaran by depositing it in the bank accounts of the assessee herein by their shareholder and director Dr.A. M. Arun. The assessee has not been able to give any explanation to substantiate with evidence for the repayment of the deposits to Dr.A.M.Arun in cash. As and when J. Dinakaran required the cash the cash seems to have been withdrawn by Dr. A. M. Arun from the bank accounts of the assessee herein and paid to J. Dinakaran. The question that has been raised that the moneys given by the shareholder and Director to the Private Ltd. Company is not a loan or deposit because no interest has been charged, would not hold well in so far as the balance sheet of the assessee clearly shows that Dr.A.M.Arun is an unsecured creditor. The assessee is also not able to give a term to the moneys deposited and withdrawn in the bank account of the assessee companies by Dr.A.M.Arun other than the term "deposit". A deposit need not be interest bearing. So also a loan. A deposit is putting money into the account of the assessee and that is exactly what has been done by Dr.A.M.Arun in the case of the assessee herein and that deposit has been returned/withdrawn by Dr.A.M.Arun. Consequently, we are of the view that the penalty u/s.271E as levied by the Addl. Commissioner and as confirmed by the Ld.CIT(A) is on a right foot and does not call for any interference.

20. In the result, appeals filed by the assessee M/s.Vasan Healthcare P. Ltd., in ITA Nos.2194 to 2197/Chny/2018 and the appeals filed by the assessee M/s.Vasan Medical Centre (India) P. Ltd., in ITA Nos.2198 to 2205/Chny/2018 stand dismissed.

Order pronounced on 26th November, 2018, at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A.MOHAN ALANKAMONY)
लेखा सदस्य /
ACCOUNTANT MEMBER

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL
MEMBER

चेन्नई/Chennai

दिनांक/Dated:- 26th November, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1 Petitioner | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |