

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.299/Del./2015
(ASSESSMENT YEAR : 2010-11)**

Studio Digital Prints Private Ltd., vs. Addl.CIT,
1796, Kotla Mubarkpur, Range 9,
New Delhi – 110 003.

(PAN : AAVFS1531R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sunny Mittal, CA
REVENUE BY : Shri Shailesh Kumar, Senior DR

Date of Hearing : 13.12.2018

Date of Order : 15.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Studio Digital Prints Private Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 19.09.2014 passed by Ld. CIT (Appeals)-XII, New Delhi qua the Assessment Year 2010-11 confirming the penalty levied u/s 271D of the Income-tax Act, 1961 (for short 'the Act') on the grounds inter alia that :-

“1. That the order dated 19.09.2014 of the Learned Commissioner of Income Tax (Appeals) [in short "CIT(Appeals)"], in rejecting the Grounds and dismissing the appeal is based on irrelevant considerations, against principles of natural justice, contrary to facts, non-application of judicious mind, arbitrary, erroneous and bad, both in the eye of law and on facts.

2. That the order levying penalty of Rs.7,74,602/- being against principles of natural justice, arbitrary, unjustified, lacks in judicious application of mind, lacks/without or in excess of jurisdiction, is passed without following the due process of law, is not sustainable in the eye of law, erroneous and bad in law, .the learned CIT(Appeals) ought to have annulled/quashed the penalty order and the rejection/dismissal of the ground/appeal by the learned CIT(Appeals) vide order dt.19.09.2014 is contrary to facts, arbitrary, erroneous and bad in law.

3. Notice u/s.271F of the I.T.Act

a. That on the facts and in the circumstances the case, the order dated 19.09.2014 of the Learned CIT (Appeals) in rejecting the Ground relating to the notice u/s.271 F of the Act is against principles of natural justice, contrary to facts, non-application of judicious mind, arbitrary, erroneous and bad, both in the eye of law and on facts.

b. That on the facts and circumstances of the case, the learned CIT (Appeals) has erred both on facts and in law in rejecting the Ground relating to the notice u/s.271F of the Act ignoring/ brushing aside/ without considering the submissions made by the appellant company.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of completed assessment under section 143 (3) of the Act at the loss of Rs.12,84,179/- against the returned loss of Rs.26,50,212/-, penalty proceedings u/s 271D of the Act were initiated for violation of provisions contained

u/s 269SS of the Act. Declining the contentions raised by the assessee, AO proceeded to levy the penalty of Rs.7,74,602/- u/s 271D of the Act.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee has availed of loan of Rs.7,74,602/- in cash from Ms. Renu Madan, Ms. Navreet Madam and Shri Joyanto Ghosh (Rs.1,20,000/- + Rs.60,000/- + Rs.5,94,602/- respectively). It is also not in dispute that the AO completed the assessment by holding that, *“since the assessee has failed to prove the creditworthiness of the creditors, the amount of Rs.7,74,602/- is treated as unexplained credit u/s 68 of the Act and thereby added the same to the income of the assessee.”* It is also not in dispute that quantum addition on the basis of which penalty has been initiated, has been accepted by the assessee.

6. The Id. AR for the assessee challenging the impugned order contended that when the AO has treated the amount of Rs.7,74,600/- as unexplained credit u/s 68 of the Act and thereby treated the same as income of the assessee, the same cannot be treated as loan and relied upon the decision rendered by the Hon'ble Delhi High Court in case cited as *Diwan Enterprises vs. CIT – (2000) 246 ITR 571 (Delhi) and CIT vs. Standard Brands Ltd. – (2006) 155 taxman 383 (Delhi)*. However, on the other hand, Id. DR for the Revenue relied upon the order passed by the AO and Id. CIT (A).

7. Hon'ble Delhi High Court in case cited as *CIT vs. Standard Brands Ltd.* (supra) decided the identical issue in favour of the assessee by returning findings as under :-

“Section 158B, read with sections 269SS and 271D, of the Income-tax Act, 1961 - Block assessment in search cases - undisclosed income - Block period 1-4-1986 to 31-3-1997 - Assessee-company had received Rs. 3 lakhs in cash from certain concern - Assessing Officer made addition of said amount by treating same as undisclosed income of assessee and he further initiated penalty proceedings against assessee for violation of section 269SS - Tribunal however, deleted addition by holding that said receipt was outside scope of undisclosed income defined under section 158B(b) - Whether when revenue had taken stand that income was undisclosed income in hands of assessee, it could not resort to proceedings under section 269SS read with section 271D - Held, yes - Whether further since block assessment could not be sustained in instant case, as said receipt was outside scope of undisclosed income defined under section 158B(b), penal action, if any, would be permissible only after a regular assessment was made - Held, yes”

8. When, in the instant case, undisputedly the Revenue has treated the amount of Rs.7,74,602/- as undisclosed income of the assessee u/s 68 of the Act, it cannot treat the same as a loan though taken in cash in the same breath so as to initiate the penalty proceedings u/s 271D of the Act. In other words, on the one hand, the Revenue cannot treat the amount of Rs.7,74,602/- as undisclosed income in the hands of assessee u/s 68 of the Act and at the same time, initiate penalty proceedings u/s 271D against the assessee for violation of provisions contained u/s 269SS of the Act as the same has not remained as loan in the hands of assessee.

9. Following the decision rendered by the Hon'ble Delhi High Court in case cited as *CIT vs. Standard Brands Ltd.* (supra), we are of the considered view that penalty levied by the AO and confirmed by the Id. CIT (A) is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, appeal filed by the assessee is allowed.

Order pronounced in open court on this 15th day of January, 2019.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 15th day of January, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XII, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.