



आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.2046/Mum/2018
 (निर्धारण वर्ष / Assessment Year: 2011-12)

Ankita Knitwear Limited E-301, Amazon CHSL, Jai Raj Nagar Off Link Road, Borivali (W) Mumbai-400 091.	बनाम/ Vs.	ACIT-12(1)(1) 2 nd Floor, Aaykar Bhavan Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCA-3859-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Mahesh Saboo-Ld.AR
Revenue by	:	Shri Vidhyadhar V.-Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	16/04/2019
घोषणा की तारीख / Date of Pronouncement	:	23/04/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member):-

1. In the aforesaid appeal by assessee for Assessment Year [AY] 2011-12, the assessee is aggrieved by levy of penalty us 271D for Rs.5,58,427/- for alleged contravention of Section 269SS as levied by Ld.AO vide penalty order dated 04/09/2014 and confirmed by Ld. Commissioner of Income Tax (Appeals)-20 Mumbai [CIT(A)] vide impugned order dated 23/02/2018.



2. Drawing our attention to the Tax Audit Report, the Ld. Authorized Representative for Assessee [AR], *Shri Mahesh Saboo*, submitted that revenue proceeded on wrong assumption of facts that the assessee accepted loans in cash from one of its directors in contravention of Section 269SS. Our attention has been drawn to the ledger extract to submit that Ld. AO misunderstood that the payments was received in cash whereas the entries of debit / credit were merely *journal entries*. It has been submitted that certain payments were made by the director i.e. *Mr. Anil Kumar Jhawar* to electricity department on behalf of the assessee company by way of account payee cheque / demand draft on 15/07/2010 for Rs.3,07,227/- and on 18/08/2010 for Rs.2,51,000/- and therefore, credit was given to the said director by way of journal entries in the books of assessee company. The lower authorities proceeded on wrong assumption that the said entries were cash entries. In the above background, it has been submitted that there was no violation of Section 269SS, in any manner, as alleged by the revenue. Our attention has also been drawn to the fact the similar penalty levied u/s 271E on account of alleged repayment of loan in cash has been deleted by the Tribunal vide ITA No. 6670/Mum/2017 order dated 30/01/2019. The Ld. DR relied upon the stand of lower authorities.

3. Upon careful consideration, we find that lower authorities got misled by wrong assumption of fact that Tax Auditor has reported violation of Section 269SS in the Tax Audit Report. Upon perusal of relevant extract of Tax Audit Report, we find that no such violation has been reported either in clause 24(a) or in Clause 24(b) as misread by the revenue. The observation 'Yes' has been put by the *Tax Auditor* against Clause 24(c) which is nothing



but mere affirmation by the *Tax auditor* that a certificate has been obtained from the assessee regarding taking or accepting loan or deposit, or repayment of the same through an account payee cheque or bank draft.

4. The perusal of ledger extract of the said director in assessee's book corroborate the submissions made by Ld. AR that the credit was given by way of journal entry only and there was no acceptance of loan in cash since the director had paid certain electricity charges on behalf of the assessee company, the credit of which was given through journal entries.

5. Under the circumstances the impugned penalty could not be sustained from any angle. Therefore, by deleting the same, we allow assessee's appeal.

6. Resultantly, the appeal stands allowed.

Order pronounced in the open court on 23rd April, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23/04/2019.

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ञ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.