

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.7123/M/2016  
Assessment Year: 2011-12**

DCIT, Cent. Cir.-7(3), Room No.655, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Simtools Pvt. Ltd., 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai - 400 018 <b>PAN: AAECs 1757M</b>
(Appellant)		(Respondent)

**CO No.207/M/2018  
(ITA No.7123/M/2016)  
Assessment Year: 2011-12**

M/s. Simtools Pvt. Ltd., 412, 17G. Vardhman Chamber, Cawasjee Patel Street, Fort, Mumbai - 400 001 <b>PAN: AAECs 1757M</b>	Vs.	DCIT, Cent. Cir.-7(3), 6 <sup>th</sup> Floor, Room No.655, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

**ITA Nos.7130 & 7131/M/2016  
Assessment Years: 2009-10 & 2008-09**

DCIT, Cent. Cir.-7(3), Room No.655, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Siddhanath Residential Paradise P. Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai - 400 018 <b>PAN: AAECp 1486A</b>
(Appellant)		(Respondent)

**ITA No.7132/M/2016  
Assessment Year: 2009-10**

DCIT, Cent. Cir.-7(3), Room No.655, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Siddhanath Residential Paradise P. Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road,
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		Worli, Mumbai – 400 018 <b>PAN: AAACP 1486A</b>
(Appellant)		(Respondent)

**ITA No.7133/M/2016**  
**Assessment Year: 2008-09**

DCIT, Cent. Cir.-7(3), Room No.655, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Siddhanath Residential Paradise P. Ltd. 216, Shah and Nahar Industrial Road, Off. Dr. E. Moses Road, Worli, Mumbai – 400 018 <b>PAN: AAACP 1486A</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R.

Revenue by : Shri Manoj Kumar Singh, D.R.  
Shri S. Abhirama Kaartikeyan, D.R.

Date of Hearing : 12.07.2019

Date of Pronouncement : 13.09.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled appeals and cross objections have been preferred against the orders dated 15.09.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2008-09, 2009-10 & 2011-12.

2. Since the facts and issues involved therein are identical in nature, hence the same are heard together and are being disposed of by this common order.

3. For the sake of convenience, the grounds from ITA No.7123/M/2016 A.Y. 2011-12 of Revenue's appeal are taken which are reproduced as under:

"1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty of Rs. 1,73,56,40,689/- levied u/s.271E of the Income Tax Act, 1961 on the ground that genuineness of the transaction made through journal entries is not in doubt.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) having held that the assessee had contravened the provisions of section 269T of the Income Tax Act, 1961, ought to have upheld the levy of penalty u/s.271E as the assessee failed to establish the compelling reasons or genuine business constraints or reasonable cause for having transactions in respect of each and every journal entry with its group concerns."

4. The only issue raised by the Revenue is against the deletion of penalty of Rs.173,56,50,689/- as levied by the AO under section 271E of the Act on the ground that assessee has contravened the provisions of section 269T of the Act.

5. The facts in brief are that during the course of assessment proceedings, the AO noticed that assessee has violated the provisions of section 269T of the Act. The AO after completing the assessment under section 143(3) of the Act vide order dated 28.03.2013 made a reference to the Additional CIT through communication dated 26.06.2013 intimating that assessee has repaid loans amounting to Rs.173,56,40,689/- to various sister concerns through journal entries and hence repaid the loans by a mode which is otherwise than through account payee cheque/draft and has committed a violation of provisions of section 269T of the Act. The Additional CIT issued notice to the assessee on 27.03.2014 to show cause as to why the penalty under section 271E of the Act should not be levied for violation of provisions of section 269T of the Act. The assessee submitted

before the Additional CIT that penalty is not leviable as the assessee has not violated the provisions of section 269T of the Act. The assessee submitted before the Additional CIT that provisions of section 271E of the Act are not applicable to the transactions between the sister concerns as no tax evasion on account of passing of such journal entries has taken place and there existed a reasonable cause as envisaged under section 273B of the Act. The Additional CIT brushed aside the contentions of the assessee and held that the assessee has violated the provisions of section 269T by repaying loans by way of journal entries and thus levied penalty of Rs.173,56,50,689/- under section 271E vide order dated 10.09.2014. The Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“5.4.4 Respectfully, following the above decision, the contention of the appellant that the journal entries are not covered within the provisions of Section 269T is rejected. However, the transactions covered by the journal entries are made in regular course of business with the sister concerns by the appellant. Even in the present case, there is no adverse finding of the AO either in the penalty order u/s 271E of the Act or in the remand report dated 09.08.2016 that any of the impugned transactions is aimed at non commercial reasons and outside the normal business operation. Therefore, though the appellant has violated the provisions of section 269T of the Act in respect of Journal entries, it has shown reasonable cause and therefore the penalty under section 271E is not leviable.”

6. The Ld. A.R., at the outset submitted that the issue involved in the present appeal is squarely covered by the decision of the co-ordinate bench of the Tribunal in the assessee's own case in ITA No.6608/M/2012 A.Y. 2011-12 vide order dated 09.07.2018. The Ld. A.R., therefore, submitted that in view of the said order of the co-ordinate bench of the Tribunal the appeal of the Revenue may kindly be dismissed. Further, the Ld. A.R. also submitted that the issue is also squarely

covered by the decision of the Hon'ble Bombay High Court in the cases of sister concerns/related concerns in ITA No.171 of 2015 – CIT vs. Ajitnath Hi-Tech Builders Pvt. Ltd., in ITA No.172 of 2015 – CIT vs. Lodha Properties Development Pvt. Ltd., in ITA No.202 of 2015 – CIT vs. Lodha Crown Buildmart Pvt. Ltd., in ITA No.213 of 2015 – CIT vs. Lodha Builders Pvt. Ltd., in ITA No.218 of 2015 – CIT vs. Adinath Builders Pvt. Ltd. and in ITA No.219 of 2015 – CIT vs. Ashthavinayak Real Estate Pvt. Ltd. in which identical issue involved i.e. the imposition of penalty under section 271D for violation of provision of section 269SS of the Act was decided in favour of the assessee. The Ld. A.R. also brought to the notice of the Bench that the SLP filed by the Revenue which also stood dismissed by the Hon'ble Supreme Court in SLP(civil) 01 diary No.42791 of 2018 arising out of order of the Hon'ble Bombay High Court in 172 of 2015 dated 6.2.2018.

7. The Ld. D.R., on the other hand, relied on the order of AO heavily by submitting that the assessee has violated the provisions of section 269SS of the Act as the various loans were repaid through journal entries. Though these were made between the sister concerns but were not covered under the provisions of section 269SS of the Act as only mode of payment provided therein is either by way of account payee cheque or draft. The Ld. A.R., therefore, prayed that the order of Ld. CIT(A) may be reversed and order of AO may be restored.

8. After hearing both the parties and perusing the material on record, we observe that in this case the assessee has done the repayment of loans by way of journal entries within the group

concerns. As per the assessee the said entries were made out of business considerations and in order to carry on the business of the assessee efficiently and more efficaciously. This is also undisputed that there was no tax evasion by way of repayment of these loans by journal entries. The case of the assessee is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.6608/M/2016 A.Y. 2011-12 wherein the co-ordinate bench of the Tribunal has held as under:

"5. We have heard the argument advanced by the Ld. Representative of the parties and perused the material available on record. The Ld. Representative of the revenue has argued that the CIT(A) has wrongly deleted the penalty, therefore, the finding of the CIT(A) is wrong and against law and facts and is liable to be set aside. However on the other hand, the Ld. Representative of the assessee has refuted the said contention. At the outset, the learned AR of the assessee submits that the grounds of appeal raised by revenue is covered in favour of assessee by the decision of Hon'ble jurisdictional High Court in assessee's group cases in CIT Vs AijnathHitech builders Private Limited & others in ITA's No. 171, 172, 202, 2.3, 218 and 219 of 2015 dated 06th February 2018 and further by the decision of co-ordinate bench of Tribunal in CIT versus Aasthavinayak Estate Company Ltd ( ITA No. 602/M/ 2017 dated 31 May 2018 and CIT Vs National Standard India Ltd ( ITA No.6607/M/2016 and 6609/M/2016 dated 6th June 2018, therefore, the CIT(A) has passed the order judiciously and correctly which is not liable to interfere with at this appellate stage. The learned AR of the assessee further submits that the journal entries were made prior to 12 June 2012 as the present appeal pertains to assessment year 2012-13, therefore, the ratio of decision in case title as CIT Vs Trump International (I) Ltd dated 12 June 2012 (345 ITR 270)/ [22 Taxmann.com 138(Bom)] is not applicable. The ACIT levied the penalty under section 271D on the observation that the assessee accepted loan/ deposits from sister concern through journal entries i.e. otherwise then account payee cheque/draft and thereby violated the provisions of section 269SS. The assessee has taken journal entries of Rs. 10,99,595/-from Dharamnath Buildtech & Farm Pvt Ltd. The assessing officer further held that the assessee has not made out any case of reasonable cause under section 273B by making the reference the decision of honorable Bombay High Court in Trump International Finance (i) Ltd (supra). Before Commissioner (Appeals) the assessee urged that the journal entries have been made with the group concern under the bonafide belief that such transaction would not be hit by the provisions of section 269 SS in view of the various judicial decision on this issue, including the decision of Delhi High Court in case of NOIDA Toll Bridge (262 ITR 260) and such loan by way of journal entries transaction were undertaken for various commercial reasons like assigning or receivable for operational efficiency, payment on the group concern for squaring up connection, for ease of consolidation of

accounts, rectification entries etc. The learned Commissioner (Appeals) after referring the decision of Bombay High Court in Trump International (supra) held that repayment of loan /deposit by way of journal entries was in contravention of provision of section 269SS has been given after the close of financial year 2011-12 relevant to assessment year 2012-13. The learned Commissioner (Appeals) concluded that reasons disclosed by assessee constitute reasonable cause within the meaning of section 273B of the Act; particularly in light of the fact that there is no finding that such transaction was undertaken to evade the tax. The learned Commissioner (Appeals) while considering the contention of assessee also observed that there is no finding that transaction by way of journal entries were not made to evade tax. The finding of the CIT(A) is based upon the decision of Bombay High Court in the assessee's sister concern case title as CIT Vs AjinathHitech builders Private Limited& others in ITA's No. 171, 172, 202, 2.3, 218 and 219 of 2015 dated 06th February 2018. The ratio of other judgments relied by the assessee is also applicable to the facts and circumstances of the present case. The assessee relied upon the other judgments such as CIT versus Aasthavinayak Estate Company Ltd ( ITA No. 602/M/ 2017 dated 31 May 2018 and CIT Vs National Standard India Ltd ( ITA No. 6607/M/2016 and 6609/M/2016 dated 6th June 2018. Further, it also came into noticed that the case of the assessee pertains to the A.Y. of 2012-13, therefore, the ratio of decision in case title as CIT Vs Trump International (I) Ltd dated 12 June 2012 (345 ITR 270)/ [22 Taxmann.com 138(Bom)] is not applicable. Accordingly, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Resultantly, the appeal of the revenue is hereby ordered to be dismissed.

#### **6. Cross-objection**

Since the matter of controversy has been adjudicated while deciding the appeal of the revenue above, therefore, in the said circumstances, adjudicating the cross-objection would only be academic in nature.”

9. Further, Hon'ble Bombay High Court in ITA No.172 of 2015 & ors. in case of CIT vs. Lodha Properties Development Pvt. Ltd. & others has decided the issue in favour of the assessee by holding that no penalty can be imposed under section 271D of the Act for having accepted loans/deposits through journal entries as there was a reasonable cause. The operative part of the decision is reproduced as under:

#### **“ 3. Regarding Question No.(i) :-**

(a) The common impugned order of the Tribunal arises from the orders passed by the Addl. Commissioner of Income Tax imposing penalty upon the respondents under Section 271D of the Act for breach of Section 269SS of the Act. This penalty was imposed inasmuch as during the previous year relevant to the subject

assessment year, the respondents had accepted loans / deposits by way of passing journal entries in its books of accounts, in breach of Section 269SS of the Act. In terms Section 269SS of the Act prohibits a person from taking / accepting any loan / deposit or specified sum, otherwise by an account payee cheque or by an account payee bank draft or by use of electronic clearing system of a bank if the amount involved is in excess of Rs.20,000/-. This imposition of penalty under Section 271D of the Act, was upheld by a common order dated 31<sup>st</sup> December, 2013 passed by the Commissioner of Income Tax (Appeals). On further appeal, the impugned order dated 27<sup>th</sup> June, 2014 of the Tribunal, inter alia held that penalty under Section 271D of the Act is not imposable in view of Section 273B of the Act. This for the reason that there was a reasonable cause Jot the failure to comply with Section 269SS of the Act.

(b) On merits of the issue, the parties before us are agreed that the Tribunal was correct in holding that receipt of any advance / loan by way of journal entries is in breach of Section 269SS of the Act as the decision of this Court in **Commissioner of Income Tax Vs. Triumph International Finance (I) Ltd. 345 ITR 270** is binding upon it. However, the Revenue's grievance is with the impugned order dated 27<sup>th</sup> June, 2014 of the Tribunal further holding no penalty under Section 271D of the Act is imposable in view of Section 273B of the Act in the present facts. This is so as the Tribunal holds that the failure to comply with Section 269SS of the Act was on account of reasonable cause on the part of the respondents. This finding of reasonable cause was on the application of parameters laid down by this Court in *Triumph International Finance* (supra) to determine reasonable cause for not complying with the provisions of Section 269SS of the Act.

(c) Mr. Mohanty, the learned Counsel for the Revenue seeks to challenge the impugned order of the Tribunal on the ground that Section 273B of the Act will have no application as the test of reasonable cause is not satisfied in the present facts for the following reasons :-

- (i) the decision of this Court in *Triumph International Finance* (supra) will have no application as that was of the case of only one transaction while in this case, there are numerous transactions reflected through the passing of journal entries;
- (ii) the reasons set out for taking advances / deposits by way of journal entry would not satisfy the test of reasonable cause; and
- (iii) the non-satisfaction of showing reasonable cause as required under Section 273B of the Act gives rise to a question of law as it is a legal inference to be drawn from primary facts as held by the Apex Court in **Premier Breweries Ltd. Vs. Commissioner of Income Tax, 372 ITR 180.**

Thus, it is submitted this question requires admission as it gives rise to a substantial question of law;

(d) We find that the impugned order of the Tribunal has on application of the test laid down for establishment of reasonable cause, for breach of Section 269SS of the Act by this Court in *Triumph International Finance* (supra) found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal while relying upon the order of this Court in

*Triumph International Finance (supra)* has held that in the present facts, neither the genuineness of receipt of loans / deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts to correct clerical errors etc. Further, the Tribunal records that as observed by this Court in *Triumph International Finance (supra)* that journal entries constituted a recognized modes of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes out side- the normal business operations or there was any involvement of money then, in these facts there was a reasonable cause for not complying with Section 269SS of the Act.

(e) Mr. Mohanty's submission that the test laid down in *Triumph International Finance (supra)* will have no application in the present facts in view of the large number of entries in this case as compared to only one entry in the case before this Court. The test of reasonable cause can not, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the Assessee for reasonable cause and this finding is not shown to be perverse. Finally, the issue of there being a reasonable cause or not is an issue of fact. No inference of law and / or issue of interpretation is to be made. The decision relied upon by the Revenue in case of *Premier Breweries Ltd. (supra)* concerned itself with the issue of a claim for deduction under Section 37 of the Act on the basis of the Agreements entered into between the parties. The inference of law in that case was whether on the facts, it could be inferred that the claim for deduction is in respect of expenditure incurred wholly and exclusively for the purposes of the business. Thus, it would involve a question of interpretation of the agreements etc. from which an inference is to be drawn. Further, it also involves application of principles of law to the facts for the purposes of deductions and, therefore, it would lead to a question of law. Therefore, the Court held in the facts of that case that a question of law does arise.

(f) In this case, the issue of reasonable cause is an inference of fact from facts and, therefore, a question of fact. The Supreme Court decision in *Sree Meenakshi Mills Ltd. Vs. Commissioner of Income Tax, 31 ITR 28* had laid down the tests to determine a question of law and / or fact. In the above context, the Court observed that when the finding is one of fact, the fact that it itself is an inference from other basic facts, will not alter its character as one of fact. Therefore, the issue of there being reasonable cause or not, is a question of fact and unless it is shown to be perverse, we would normally not interfere.

(g) In the above circumstances, the view taken by the Tribunal on the facts before it, is a possible view and does not give rise to any substantial question of law.

(h) In any event, as rightly pointed out by Mr. Sridharan, learned Senior Counsel for the respondents assesses, the order of this Court in *Triumph International Finance (supra)* was rendered on 12<sup>th</sup> June, 2012. This, was in an appeal filed by the Revenue from the order of the Tribunal dated 29<sup>th</sup> January, 2008, which had held

that deposits / loans received through journal entries do not fall with the mischief of Section 269SS of the Act, so as to invite penalty under Section 271D of the Act. This, the Tribunal did by following its earlier orders in the case of VN. Parekh Ltd. and Ketan Parekh as indicated in the order of this Court in *Triumph International Finance* (supra). Our attention was also invited to numerous reported decisions of the Tribunal in the cases of Sunflower Builders Vs. Dy.CIT, 1997 (61) ITD (Pune) 227, Asst.CIT Vs. Ruchika Chemicals & Investment (P) Ltd. 2004 (88) TTJ (Delhi)85 and Asst.CIT Vs. Lala Murari Lal & Sons, 2004(2) SOT (Luck) 543 wherein it has been held journal entries in the book of accounts indicating deposit / loans will not fall foul of Section 269SS of the Act. Besides, the Delhi High Court in ***Commissioner of Income Tax Vs. Noida Toll Bridge Co. Ltd. 262 ITR 260 inter alia*** held that payment of Rs.4.85 crores made by the assesses by a journal entry in its books of account by crediting the account of ILFS, would not fall foul of Section 269SS of the Act. This particularly in the absence of any payment being made in cash.

(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of *Triumph International* (Supra) and decision of VH. Parekh (P) Ltd., Ketan V Parekh, Sunflower Builders (supra), Ruchika Chemicals (supra), Lala Murari Lal (supra) and the decision of the Delhi High Court in *Noida Toll Bridge Co. Ltd.* (supra) were holding the field. Thus, not in breach of Section 269SS of the Act. In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in *Triumph International Finance* (supra) has only clarified / stated the position as always existing in law, the receiving of deposits / loans through journal entries would certainly be hit by Section 269SS of the Act. Nevertheless, prior to the decision of this Court in *Triumph International Finance* (supra), there was reasonable cause for respondents to receive deposit / loan through journal entries. This non-compliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act.

(j) In the above circumstances, the view taken by the Tribunal in the impugned order holding that no penalty can be imposed upon the respondents as there was a reasonable cause in terms of Section 271B of the Act for having received loans / deposits through journal entries is at the very least is a possible view in the facts of the case.

(k) Therefore, the question as posed does not give rise, to any substantial question of law. Thus, not entertained.”

10. We further find that the said decision of the Hon'ble Bombay High Court was affirmed by the Hon'ble Bombay High Court in SLP(E) para No.42719 of 2018 dated 18.12.2018. In the present case also there existed reasonable cause for accepting the loans by way of journal entries and thus do not find any

infirmity in the order of ld. CIT(A). Since the case of the assessee is fully covered as discussed above, we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

**CO No.207/M/2018**

11. Since the issue has been decided and adjudicated in favour of the assessee and against the Revenue while deciding the appeal of the Revenue, therefore cross objection filed by the assessee becomes academic in nature and need no adjudication.

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12. The issue involved in these appeals is identical to the one as stated above in ITA No.7123/M/2016 for A.Y. 2011-12. Therefore, our findings in ITA No.7123/M/2016 for A.Y. 2011-12 would, mutatis mutandis apply to these appeals as well. Accordingly, the all these appeals of the Revenue are dismissed.

13. Resultantly, all the appeals of the Revenue and cross objection of the assessee are dismissed.

**Order pronounced in the open court on 13.09.2019.**

**Sd/-**  
**(Amarjit Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 13.09.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.