



IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.187 and 188/Mum./2019
(Assessment Year : 2007-08)

M/s. Vijay Steel Corporation Pvt. Ltd.
2, Sabhapati Bhawan, 19, Meera Baugh
Santacruz, Mumbai 400 054
PAN – AAACV3517E

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Range-13(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Sushil Kumar Mishra

Date of Hearing – 04.11.2020

Date of Order – 06.11.2020

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeals have been filed by the assessee challenging the order dated 28th September 2018, passed by the learned Commissioner of Income Tax (Appeals)-21, Mumbai, confirming penalty imposed under section 271D and 271E of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2007-08.

2. Brief facts are, the assessee, a resident company, filed its return of income for the impugned assessment year on 31st October 2007,

declaring total income of ₹ 2,95,47,968. In the course of assessment proceedings, the Assessing Officer noticed that during the financial year relevant to the assessment year under dispute, the assessee, by way of book entries has availed loan of ₹. 6,11,778 and re-paid loan of ₹ 2,63,000. According to the Assessing Officer, availing and re-paying loan otherwise than by an account payee cheque/demand draft is in violation of the provisions contained under section 269SS and 269T of the Act. Accordingly, he initiated proceedings for imposition of penalty under section 271D and 271E of the Act. As alleged by the Assessing Officer, in response to the show cause notice issued under section 271D and 271E r/w section 274 of the Act, the assessee did not furnish any explanation, but sought adjournment. Accordingly, he proceeded to pass orders imposing penalty under section 271D and 271E of the Act for amounts of ₹. 6,11,778 and ₹ 2,63,000 respectively. Being aggrieved with the penalty orders so passed, the assessee preferred appeals before the first appellate authority. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) having found that part of the loan taken is below the threshold limit of ₹. 20,000 and some amount has been taken through banking channel, partly sustained the penalty imposed under section 271D of the Act by reducing it to ₹. 4,62,398. Whereas, he fully sustained the penalty imposed under section 271E of the Act.

2. When the appeals were called for hearing no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. In view of the above and considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, in the tax audit report the auditor has observed that certain amount of loan was availed and re-paid through book entries. Relying upon such report of the auditor, the Assessing Officer had initiated proceedings for imposition of penalty under section 271D and 271E of the Act towards alleged violation of provisions of section 269SS and 269T of the Act. Of-course, the Assessing Officer has ultimately imposed penalty under section 271D and 271E of the Act. It is evident, before the first appellate authority, the assessee had furnished a written submission, wherein, the details of loan availed and loan re-paid during the year were furnished along with the supporting evidence, such as, ledger account, bank statements, etc. In the written submissions, the assessee has specifically stated that except some small amounts below the threshold limit of ₹ 20,000, all other loan amounts exceeding ₹ 20,000 were availed and re-paid through

account payee cheque. The details of such cheque payments were also furnished. Though, learned Commissioner (Appeals) after verifying the submissions and evidences furnished by the assessee has not found anything amiss, however, the only doubt he has raised is with regard to the delay in the relevant entries as made in the ledger account and as reflected in the bank statement. Though, there is no difference in the amount notified. Thus, learned Commissioner (Appeals) has held that the assessee has failed to establish the nexus between the payment as appearing in the ledger account and as per the bank statement. In our considered opinion, when the assessee has furnished the documentary evidences to establish the fact that the loans were availed and re-paid through account payee cheque, such claim of the assessee cannot be rejected on mere suspicion and surmises without making proper enquiry.

4. Even, otherwise also, it is a fact on record that both the Assessing Officer as well as learned Commissioner (Appeals) have observed that the loans were availed and re-paid by the assessee through book entries. The issue which requires consideration is, whether such availing and re-payment of loan through book entries without involvement of any cash transaction can at all attract the provisions of section 269SS and 269T of the Act. The Hon'ble Jurisdictional High Court in CIT v/s Triumph International Finance India Ltd., [2012] 345 ITR 270 (Bom.), has held that availing and re-

payment of loan through book/journal entries would attract provisions of section 269SS and 269T of the Act. However, the aforesaid legal proposition has been further clarified by the Hon'ble Jurisdictional High Court in CIT v/s Ajitnath High-Tech Builders Pvt. Ltd. & Ors., [2019] 412 ITR 316 (Bom.), wherein, it has been held that, since, prior to the decision of the Hon'ble Jurisdictional High Court in Triumph International Finance India Ltd. (supra), which was rendered on 12th June 2012, there was reasonable cause for the assessee to receive and re-pay loan through journal entries because of various decisions of the Tribunal holding that receipt and re-payment of loan through journal entries would not come within the purview of section 269SS and 269T of the Act, the non-compliance to the provisions of section 269SS and 269T of the Act would certainly be a reasonable cause under section 273B of the Act for non-imposition of penalty under section 271D and 271E of the Act. In the facts of the present appeal, admittedly, the availing and re-payment of loan through book entries was prior to 12th June 2012. Therefore, as per the ratio laid down by the Hon'ble Jurisdictional High Court in Ajitnath High-Tech Builders Pvt. Ltd. (supra), non-compliance to the provisions of section 269SS and 269T of the Act was due to a reasonable cause. Hence, imposition of penalty under section 271D and 271E of the Act in the facts of the present appeals is unjustified. Accordingly, we delete the penalty imposed

under section 271D and 271E of the Act. Grounds raised by the assessee are allowed.

5. In the result, appeals are allowed.

Order pronounced in the open court on 06.11.2020

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.11.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai