

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA Nos.3050 & 3051/MUM/2019
(Assessment Year: 2014-15)**

D.C.I.T, CC-7(3),
Room No. 655, 6th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 020

M/s Palava Dwellers Pvt. Ltd.
Vs. 412, Vardhman Chambers,
Cawasji Patel Street,
Horniman Circle Fort,
Mumbai – 400 001

PAN No. AABCL1117D

(Revenue)

(Assessee)

Assessee by : Shri Neraj Sheth, A.R
Revenue by : Ms. Shreekala Pardeshi, D.R

Date of Hearing : 06/10/2021
Date of pronouncement : 11/10/2021

ORDER

PER RAVISH SOOD, J.M:

The captioned appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-49, Mumbai, dated 12.02.2019, which in turn arises from the respective orders passed by the Additional Commissioner of Income Tax, Central Range-7, Mumbai (for short "Addl. CIT") under Sec. 271D and Sec. 271E of the Income-tax Act, 1961 (for short "Act"), dated 29.06.2017 for A.Y. 2014-15. As the issues involved in the aforementioned appeals are interwoven or in fact intertwined, therefore, the same are being taken up and disposed off by way of a consolidated order. The revenue has assailed the impugned order on the following grounds before us:

- "1. Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is justified in deleting the penalty of Rs.1,99,68,616/- u/s 271D holding that there was reasonable cause u/s 273B for entering on transaction to transaction basis in the given case for the existence of reasonable cause u/s 273B which led to the exigency of contravention of provisions of sections 269SS/ST.

2. Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is justified in holding that the journal entries should enjoy equal immunity on par with account payee cheques and bank drafts.
3. Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is justified in merely relying upon the High Court Order in Assessee's group case company, Lodha Builders (P) Ltd. in ITA Nos. 171/172/202/2013/2018/2019 of 2015 vide order dated 06.02.2018 without examining the cause behind each instance of default which, therefore, rendered the impugned order perverse, and thereby rendered the applicability of any judicial precedent as otiose."

2. Briefly stated, the assessee company is engaged in the business of land development and construction of real estate. Assessment was framed by the A.O vide his order passed u/s 143(3), dated 20.12.2016 and the income of the assessee was determined at Rs.306,02,55,256/- under the normal provisions of the Act while for its 'book profit' was determined at Rs.291,18,35,338/-. As the assessee was stated to have taken/settled certain loan transactions otherwise than through account payee cheques or bank drafts, therefore, the A.O holding a conviction that the assessee had violated the provisions of Sec.269SS and Sec. 269T made reference to the Addl.CIT, Central Circle-7, Mumbai (for short "Addl. CIT") for initiating penalty proceedings u/s 271D and 271E of the Act. The Addl. CIT after perusing the reference submitted by the A.O issued a 'Show cause' notice (SCN) on 02.06.2017 and called upon the assessee to explain as to why penalty under Sec. 271D and Sec. 271E may not be imposed on it.

3. On a perusal of the books of accounts of the assessee company, it was observed by the Addl. CIT that the same revealed following credit entries in the ledger accounts of its various associate concern's :

Sr. No.	Name of the Sister concerns	Credits (Rs.)
1.	Lodha Novel Buildfarms Private Limited	2,28,278
2.	Lodha Pranik Landmark Developers Pvt. Ltd.	83,80,105
3.	Lodha Crown Buildmart Private Limited	86,75,738
4.	Shreeniwas Cotton Mills Ltd.	26,84,505
	Total	1,99,73,256

On a perusal of the respective "ledger a/cs" of the aforesaid 'sister concerns' (as appearing in the books of accounts of the assessee), it was gathered by the Addl. CIT that the credit entries therein appearing found its genesis in the payments made by the lender companies to the third parties at the behest of the assessee company, bifurcated details of which are as under :

(A). Lodha Novel Buildfarms Private Limited

Date	Particulars	Credit Amount
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advertisements given through them. On the other hand BCCL had booked flats in a project that was being developed by Lodha Pranik Landmark Developers Pvt. Ltd. (LPLDPL), a sister concern of the assessee. The amount payable to BCCL by the assessee company was adjusted against the amount receivable from BCCL towards flat booking in LPLDPL. The said adjustment was given effect by way of the abovementioned journal entry.

(C). Lodha Crown Buildmart Private Limited

Date	Particulars	Credit Amount
09.08.2013	Bennett Coleman & Co. Ltd.	86,75,728
	Total	86,75,728

Journal entry passed in the ledger account of Lodha Crown Buildmart Pvt. Ltd. (LCBPL) was as follows:

“Bennett Coleman & Co. Ltd.....Dr. Rs.86,75,728
 To Lodha Crown Buildmart Private Limited.....Cr. Rs.86,75,728.”

Bennett Coleman & Co. Ltd. (BCCL) is a vendor through which advertisements were provided by the assessee company in newspapers. The assessee had an amount payable to BCCL on account of advertisements given through them. On the other hand BCCL had booked flats in a project that was being developed by Lodha Crown Buildmart Pvt.Ltd. (LCBPL), a sister concern of the assessee. The amount payable to BCCL by the assessee was adjusted against the amount receivable from BCCL towards flat booking in LCBPL. The said adjustment was given effect by way of the abovementioned journal entry.

(D). Shreeniwas Cotton Mills Ltd.

Date	Particulars	Credit Amount
18.07.2013	Alakh Advertising And Publicity	5,87,906
25.10.2013	Alakh Advertising And Publicity	11,90,960
13.11.2013	Riddhi Siddhi Bullions Ltd.	7,94,899
08.03.2014	Alakh Advertising And Publicity	1,10,740
	Total	26,84,505

The journal entry passed in the ledger account of Shreeniwas Cotton Mills Ltd, inter alia, was as follows:

“Alakh Advertising And Publicity.....Dr	Rs.18,89,606
To Shreeniwas Cotton Mills Ltd.....Cr.	Rs.18,89,606.”

Alakh Advertising and Publicity (AAP) is a vendor that had provided advertisement services on hoardings to the assessee company. The assessee had an amount payable to AAP on account of advertisements given through them. On the other hand AAP had booked flats in a project that was being developed by Shreeniwas Cotton Mills Ltd. (SNCML), a sister concern of the assessee. The amount payable to AAP by the assessee was adjusted against the amount receivable from it towards flat booking in SNCML. The adjustment was given effect by way of the abovementioned journal entry.

4. It is claimed by the assessee company that the aforementioned amounts represented the payments that were made by the lender company to a third party on behalf of the assessee due to business expediency/necessity. However, the Addl. CIT was of the view that the assessee except for making a general statement that the aforesaid transactions were prompted by business expediency, however, had failed to demonstrate any such business expediency. It was observed by the Addl.CIT that the assessee company had undertaken transactions with a view to extinguish the mutual liability of paying/receiving the amounts by the assessee and its ‘sister concerns’ with two parties. On being queried that as to how the aforesaid transactions were as per the mandate of Sec. 269SS and 269T of the Act, it was submitted by the assessee that it had undertaken the said transactions with a view to extinguish the mutual liability of paying/receiving the amounts by the assessee and its ‘sister concerns’ with third parties. It was the claim of the assessee that as its action of extinguishing the mutual liability of paying/receiving through journal entries constituted a reasonable cause; hence, penalty proceedings initiated u/s 271D/271E should be dropped. After deliberating on the explanation of the assessee it was observed by the Addl.CIT that the submission of the assessee could be categorized into three parts:

- “(i) transaction settled through Journal entries does not constitute accepting the loan or deposits in money; hence the same does not constitute violation of section 269SS of the I.T. Act resulting into levy of penalty u/s 271D of the I.T. Act.;
- (ii) the journal entries have been passed to transfer the rights and liabilities between the assessee and other group companies to avoid the procedural delays/hassles which constitute the reasonable cause within the meaning of section 273B of the I.T. Act hence, no penalty u/s 271D of the I.T. Act should be levied;
- (iii) there is no finding by the AO in the assessment order that there is any unaccounted cash involved and the AO has not doubted the transactions.”

Rebutting the claim of the assessee that the transactions settled through journal entries do not tantamount to acceptance of a loan or deposit in money and, thus, de hors any violation of the provisions of Sec. 269SS of the Act no penalty could be imposed u/s 271D of the Act, it was observed by the Addl. CIT that the said contention was contrary to the view taken by the Hon'ble jurisdictional High Court in the case of CIT Vs. Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom). Although, it was the claim of the assessee that the transactions in question were genuine and made by the lender companies to the third parties on the behalf of the assessee due to business expediency/necessity, however, it was observed by the Addl.CIT that the assessee had failed to demonstrate any such business expediency. Observing, that the case of the assessee was not as that of a simple squaring up or mutual extinguishment of liability which could be done by passing journal entries, it was noticed by the Addl. CIT that the party from whom the amount was shown to be accepted in the nature of loan or deposit was not the same party to whom the same amount was repaid. It was further observed by the Addl. CIT that the spirit of the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom) was that only such transactions where there is squaring up with the same party could claim the benefit of a reasonable cause u/s 273B of the Act. However, it was observed by the Addl. CIT that the assessee had failed to discharge the onus that was cast upon it for proving that there was a reasonable cause for carrying out each of the transactions in question for bringing its case within the realm of Sec. 273B of the Act. Insofar the reliance that was placed by the assessee on the order of the ITAT, Mumbai in the case of its 'sister concern', it was observed by the Addl. CIT that the said order had not been accepted by the department and had been challenged by way of an appeal before the Hon'ble High Court. Accordingly, the Addl.CIT vide his order passed u/s 271D of the Act, dated 29.06.2017 imposed a penalty of Rs.1,99,68,616/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Relying on the order passed by the Tribunal in the case of the assessee's group company, viz. Lodha Builders (P) Ltd. (supra), the CIT(A) was of the view that the acts of assigning of receivables or extinguishment of mutual liability of paying/receiving of amounts by the assessee and its sister concern to third parties was to be assumed as an act carried out in contravention of the provisions of Sec. 269SS, there being a reasonable cause for doing the same would thus not attract the penal provisions for infraction of the provisions of Sec.269SS of the Act. The CIT(A) in support of his aforesaid conviction relied on the orders passed by the Hon'ble High Court of Bombay in the case of the assessee's group companies in ITA No. 171/172/202/203/218/2019 of 2015, dated 06.02.2018. Observing, that neither the A.O nor the Addl.CIT had made out a case of any

malafide intention on the part of the assessee nor brought on record any adverse finding, the CIT(A) was of the view that the penalty imposed by the Addl. CIT u/s 271D could not be sustained. Accordingly, the CIT(A), vide his order dated 25.07.2017 vacated the penalty of Rs.1,99,68,616/- that was levied by the Addl.CIT u/s 271D of the Act.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the Addl.CIT u/s 271D of the Act.

7. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee relied on the order of the CIT(A). It was submitted by the Id. A.R that the issue was squarely covered by the order passed by the Tribunal in the case of assessee's group company, viz. DCIT Vs. M/s Macrotech Developers Limited (Successor to Macrotech Construction Pvt. Ltd.), ITA No. 1415 & 1416/Mum/2018, dated 08.04.2021.

8. We have heard the Id. Authorized Representatives for both the parties and perused the orders of the lower authorities a/wthe material available on record. Before advertng any further, it would be relevant to first consider the nature of transactions between the assessee and its 'sister concerns' on the basis of which the CIT(A) had held the same as assigning of receivables, which are for a fair appreciation culled out as under :

A). **Lodha Novel Buildfarms Private Limited :**

(i). Mangal Paper Mart (MPM) had entered into an agreement with Lodha Novel Buildfarms Pvt. Ltd. (LNBPL) according to which 50% of the value of invoices for advertisement services raised by the MPM on the group companies will be adjusted against the flat booked by MPM in LNBPL.

B). **Lodha Pranik Landmark Developers Pvt. Ltd. :**

(i). Bennett Coleman & Co. Developers Pvt. Ltd. (BCCL) had entered into an agreement with Lodha Pranik Landmark Developers Pvt. Ltd. (LPLDPL) according to which 66.67% of the value of invoices raised by BCCL for advertising services on group companies will be adjusted against the flat booked by BCCL in LPLDPL.

C). **Lodha Crown Buildmart Private Limited :**

- (i). Bennett Coleman & Co. Developers Pvt. Ltd. (BCCL) had entered into an agreement with Lodha Crown Buildmart Private Limited. (LCBPL) according to which 66.67% of the value of invoices raised by BCCL for advertising services on group companies will be adjusted against the flat booked by BCCL in LCBPL.

D). **Shreeniwas Cotton Mills Ltd. :**

- (i). Alakh Advertising & Publicity Pvt. Ltd. (AAPPL) had entered into an agreement with Shreeniwas Cotton Mills Ltd. (SCML) according to which 50% of the value of invoices raised by AAPPL for advertising services on group companies will be adjusted against the flat booked by AAPPL in SCML.

As observed by the CIT(A), the ITAT, Mumbai in the case of the assessee's group concern, viz. Lodha Builders Pvt. Ltd. (supra) had inter alia observed, that acts of assigning of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its 'sister concerns' to third parties would constitute "reasonable cause" and would not attract penalty u/s 271D or 271E. Also, such an act of assigning of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its sister concerns had came up before the Tribunal in the case of a group concern of the assessee, viz. DCIT Vs. M/s Macrotech Developers Limited (Successor to Macrotech Construction Pvt. Ltd.), ITA No. 1415 & 1416/Mum/2018, dated 08.04.2021. After deliberating at length on the issue under consideration, the Tribunal in context of assignment of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its sister concerns had observed as under :

"4.14. We find that the genuineness of the aforesaid transactions were neither disputed nor doubted by the revenue. These transactions admittedly were not made with a malafide intent to evade tax. We find that there is no evidence brought on record to even remotely suggest that the assessee company by passing the aforesaid journal entries had sought to introduce its unaccounted income into the system. We find that these are genuine business transactions entered in the normal course of business. Hence if the aforesaid transactions are looked into from the perspective of the object and intention behind introduction of provisions of section 269SS and 269T of the Act , then the provisions of section 269SS and 269T of the Act cannot be made applicable to the facts of the instant case. Moreover, from the detailed explanation of the aforesaid transactions together with the purpose for which those journal entries were passed, it could be safely concluded that these entries neither reflect any receipt of loan nor repayment of loan. At the cost of repetition, we find that the journal entries are passed towards amount receivable from BETL towards sale of flats which was adjusted against amount payable to LDPL and SNCML on an understanding that both these companies are liable to pay BETL towards advertisement expenses. Hence it could be safely concluded that these entries were passed out of business constraints and exigencies and for administrative convenience

with no malafide intent to evade payment of tax. In our considered opinion, this business constraint and exigency and administrative convenience itself constitutes reasonable cause within the meaning of section 273B of the Act . Hence no penalty u/s 271D and 271E of the Act could be invoked for the same. In this regard, we find that the Hon'ble Jurisdictional High Court had addressed the similar issue whether the aforesaid behaviour of the assessee would constitute reasonable cause u/s 273B of the Act to escape from the rigours of applicability of provisions of section 269SS and 269T of the Act in the case of CIT vs Triumph International Finance (I) Ltd reported in 208 Taxman 299 (Bom). The relevant operative portion of the said decision is reproduced hereunder:-

“23. The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under Section 271E would have to be construed liberally depending upon the facts of each case.

24. In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account-payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an empty formality to repay the loan/deposit amount by account-payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee. The fact that the assessee company belongs to the Ketan Parekh Group which is involved in the securities scam cannot be a ground for sustaining penalty imposed under Section 271E of the Act if reasonable cause is shown by the assessee for failing to comply with the provisions of Section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under Section 271E of the Act deserves acceptance.

25. In the result, we hold that the Tribunal was not justified in holding that repayment of loan/deposit through journal entries did not violate the provisions of Section 269T of the Act. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a bonafide transaction and was made with a view to evade tax, we hold that the cause shown by the assessee was a reasonable cause and, therefore, in view of Section 273B of the Act, no penalty under Section 271E could be imposed for contravening the provisions of Section 269T of the Act.

4.15. We also find that the Hon'ble Delhi High Court in the case of CIT vs Worldwide Township Projects Ltd reported in 229 Taxman 560 (Del) in the similar set of facts and circumstances had categorically observed as under:-

“ 8. A plain reading of the aforesaid Section indicates that (the import of the above provision is limited) it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the Section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a

debt or a liability arises on account of book entries. The object of the Section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to Section 269SS of the Act which defines loan or deposit to mean "loan or deposit of money". The liability recorded in the books of accounts by way of journal entries, i.e. crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of Section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels. M/s PACL India Ltd. made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s PACL India Ltd. In view of this admitted position, no infringement of Section 269SS of the Act is made out. This Court, in the case of Noida Toll Bridge Co. Ltd. (supra), considered a similar case where a company had paid money to the Government of Delhi for acquisition of a land on behalf of the assessee therein. The Assessing Officer levied a penalty under Section 271D of the Act for alleged violation of the provisions of Section 269SS of the Act since the books of the assessee reflected the liability on account of the lands acquired on its behalf. On appeal, the CIT (Appeals) affirmed the penalty. The order of the CIT was successfully impugned by the assessee before the ITAT. On appeal, this Court held as under:—

"While holding that the provisions of Section 269SS of the Act were not attracted, the Tribunal has noticed that: (i) in the instant case, the transaction was by an account payee cheque, (ii) no payment on account was made in cash either by the assessed or on its behalf, (iii) no loan was accepted by the assessee in cash, and (iv) the payment of Rs. 4.85 crores made by the assessee through IL & FS, which holds more than 30 per cent. of the paid-up capital of the assessee, by journal entry in the books of account of the assessed by crediting the account of IL & FS. Having regard to the aforesaid findings, which are essentially findings of fact, we are in complete agreement with the Tribunal that the provisions of section 269SS were not attracted on the facts of the case. Admittedly, neither the assessee nor IL & FS had made any payment in cash. The order of the Tribunal does not give rise to any question of law, much less a substantial question of law. We accordingly decline to entertain the appeal. Dismissed."

9. In our view, the present appeal is bereft of any merit and is, accordingly, dismissed."

4.15.1. We find that though the ultimate finding recorded by the Hon'ble Delhi High Court had been subsequently reversed by the decision of Hon'ble Jurisdictional High Court in the case of Triumph International supra, still the observations made by the Hon'ble Delhi High Court on the genuineness of the transactions in the ordinary course of business and the element of 'reasonable cause' thereon, would still remain applicable and would have more persuasive value.

4.16. In view of our aforesaid observations and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the Id CITA had rightly held that no penalty u/s 271D of the Act could be levied in respect of transactions with BETL in the sums of Rs 47,22,996/- and Rs 31,40,533/- . Similarly , we hold that the Id CITA had rightly held that no penalty u/s 271E of the Act could be levied in respect of transactions with BETL in the sums of Rs 36,14,531/-, Rs 48,77,220/-, Rs 58,93,873/- and Rs 45,22,389/-.

5. With regard to the other remaining entries where transactions have been passed through journal entries, the Id AR explained that the other entries which are less than Rs 1 lakh (per entry), are assignment of rights/ liabilities, the assignment of genuine and bonafide receivables / payables and extinguishment of mutual obligations effectuated by passing journal entries. These journal entries passed represent assignment/transfer of assets/debtors and liabilities/creditors having underlying transactions arising out of business expediencies and exigencies. These entries arise in the normal course of day to day business

activities. We find that the argument of the Id AR deserves to be accepted on the bare perusal of the figures involved in the said journal entries as no person would either receive or repay loans in such odd amounts. Going by the frequency of the said transactions and the figures involved therein, it could be safely concluded that all those transactions were entered in the normal course of business of the assessee company by way of assignment of rights / liabilities and assignment of genuine receivables / payables. Moreover, the genuineness of those transactions reflected through journal entries have neither been disputed nor doubted by the revenue. These would certainly constitute reasonable cause within the meaning of section 273B of the Act. We find support from the decision of the Co-ordinate bench of this tribunal in the case of Lodha Developers Pvt Ltd and others wherein 7 reasons have been listed which could be considered as 'reasonable cause'. The same are as under:-

- a) Alternate mode of raising funds
- b) Assignment of receivables
- c) Squaring of transactions
- d) Operational efficiency/MIS purpose
- e) Consolidation of family member debts
- f) Correction of error
- g) Loans taken in cash

5.1. In the instant case, these journal entries in the name of Joystar India amounting to Rs 98,263/- ; Shree Ganesh Enterprise amounting to Rs 14,675/-(twice) ; Macrotech Construction amounting to Rs 1,600/- (twice) ; Sonal Super Services amounting to Rs 3,94,100/- ; RCIL amounting to Rs 1,852/- ; Super Fabrication amounting to Rs 13,100/- ; J K Enterprises amounting to Rs 2,621/- ; Shree Sai Enterprise amounting to Rs 800/- and UK Enterprises amounting to Rs 66,912/-, were passed towards assignment of genuine and bonafide receivables/payables arising out of business expediencies and exigencies in the normal course of business. Hence the same would certainly constitute reasonable cause within the meaning of section 273B of the Act and hence no penalty u/s 271D and 271E of the Act could be levied for the aforesaid sums. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of Triumph International reported in 208 Taxman 299 (Bom) supra wherein the relevant operative portion is already reproduced hereinabove. Respectfully following the same, we do not find any infirmity in the order of the Id CITA cancelling the levy of penalty in the aforesaid sums of various parties u/s 271D and 271E of the Act. Accordingly, the grounds raised by the revenue are dismissed."

Also, we may herein observe that a similar view had been taken by a coordinate bench of the Tribunal in the case of Lodha Builders Pvt. Ltd. & others (39 appeals), vide its consolidated order dated 31.01.2020. As stated by the Id. A.R, and rightly so, the issue involved in the present appeal i.e levy of penalty u/s 271D of the Act as regards the assignment of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its sister concerns remains the same as was there before the Tribunal in its aforesaid order passed in the case of the 'sister concern' of the assessee, viz. M/s Macrotech Developers Limited (Successor to Macrotech Construction Pvt. Ltd.), ITA No. 1415 & 1416/Mum/2018, dated 08.04.2021, therefore, we respectfully follow the same. We, thus, finding no infirmity in the order of the CIT(A) uphold the same.

9. Resultantly, the appeal filed by the revenue is dismissed.

ITA No. 3050/Mum/2019
A.Y 2014-15

10. We shall now take up the appeal filed by the revenue against the order of the CIT(A) quashing the penalty imposed by the A.O u/s 271E of the Act. The revenue has assailed the impugned order on the following grounds before us :

- “1. Whether on the facts and circumstances of the case and in law, the Hon’ble CIT(A) is justified in deleting the penalty of Rs.8,53,841/- u/s 271E holding that there was reasonable cause u/s 273B for entering on transaction to transaction basis in the given case for the existence of reasonable cause u/s 273B which led to the exigency of contravention of provisions of sections 269SS/ST.
2. Whether on the facts and circumstances of the case and in law, the Hon’ble CIT(A) is justified in holding that the journal entries should enjoy equal immunity on par with account payee cheques and bank drafts.
3. Whether on the facts and circumstances of the case and in law, the Hon’ble CIT(A) is justified in merely relying upon the High Court Order in Assessee’s group case company, Lodha Builders (P) Ltd. in ITA Nos. 171/172/202/2013/2018/2019 of 2015 vide order dated 06.02.2018 without examining the cause behind each instance of default which, therefore, rendered the impugned order perverse, and thereby rendered the applicability of any judicial precedent as otiose.”

11. Briefly stated, on a reference received from the A.O that the assessee had repaid loans in violation of the provisions of Sec. 269T of the Act, the Addl. CIT issued a ‘Show cause’ notice (SCN) on 02.06.2017 and called upon the assessee to explain as to why penalty under Sec. 271E may not be imposed on it.

12. On a perusal of the books of accounts of the assessee company, it was observed by the Addl. CIT that the same revealed following ‘debit entries’ in the ledger accounts of two of its associate concern’s :

Sr. No.	Name of the Sister concerns	Credits (Rs.)
1.	Lodha Novel Buildfarms Private Limited	13,54,043
2.	Lodha Crown Buildmart Private Limited	73,99,798
	Total	87,53,841

On a perusal of the respective “ledger a/cs” of the aforesaid ‘sister concerns’ (as appearing in the books of accounts of the assessee), it was gathered by the Addl. CIT that the debit entries therein appearing found its genesis in the payments made by the assessee company to third parties at behest of the aforesaid lender companies, bifurcated details of which are as under :

(A). Lodha Novel Buildfarms Private Limited

Date	Particulars	Debit Amount
02.08.2013	Ralph Philip Raymond Coutinho	7,822
02.08.2013	Ralph Philip Raymond Coutinho	11,33,662
02.08.2013	Ralph Philip Raymond Coutinho	2,07,284
02.08.2013	Ralph Philip Raymond Coutinho	5,275
	Total	13,54,043

Journal entry pertaining to the aforesaid 'debit balance' in the ledger account of Lodha Novel Buildfarms Pvt. Ltd. (LNBPL) was as follows:

"Lodha Novel Buildfarm Pvt. Ltd.Dr. Rs.13,54,043
 To Ralph Philip Raymond Coutinho.....Cr. Rs.13,54,043."

Ralph Philip Raymond Coutinho (RPRC) had originally booked a flat in Lodha Novel Buildfarms Pvt. Ltd. (LNBPL) and had made payments against installments that became due. However, during the relevant previous year RPRC had cancelled his booking with LNBPL and booked a flat with the assessee company. The amount left after cancellation charges was transferred to the assessee company for adjusting against receivables from RPRC for flat booking in assessee company.

B). Lodha Crown Buildmart Private Limited

Date	Particulars	Credit Amount
24.07.2013	Lodha Builders Pvt. Ltd.	73,99,798
	Total	73,99,798

Journal entry pertaining to the aforesaid 'debit balance' in the ledger account of Lodha Crown Buildmart Private Limited (LCBPL) was as follows:

"Lodha Crown Buildmart Private Limited ...Dr. 73,99,798
 To Lodha Builders Private Limite Cr. 73,99,798"

The assessee company had explained that employee expenses of Lodha Crown Buildmart Pvt. Ltd were paid by the assessee company however, Lodha Builders Pvt. Limited was wrongly debited. Accordingly, in order to rectify this error the above entry was passed.

13. We have given a thoughtful consideration and are of the considered view that the issue involved in the present appeal pertains to levy of penalty u/s 271E of the Act as regards the assignment of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its sister concerns AND rectification of an error. We, thus, going by the reasoning adopted by us for vacating the penalty u/s 271D of the Act, on the same footing uphold the order of the CIT(A) who had rightly set-aside the impugned penalty of Rs. 87,53,841/- imposed by the Addl. CIT, for the reason, that the same is simpliciter an assignment of receivables or extinguishment of mutual liability of paying/receiving the amounts by the assessee and its sister concerns AND rectification of an error. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold his order.

14. The appeal filed by the revenue is dismissed.

15. Resultantly, both the appeals of the revenue i.e ITA No. 3050/Mum/2019 and ITA No. 3051/Mum/2019 are dismissed.

Sd/-
(Prمود Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 11.10.2021

PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai.