

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH
(Conducted Through Virtual Court)
**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1705/Ahd/2018
Assessment Year 2014-15**

Bookmywish E Commerce Pvt. Ltd. PAN: AAFCB1256K (Appellant)	Vs	Addl. CIT, Range-1(2), Ahmedabad (Respondent)
--	----	--

**Revenue by: Shri V.K. Singh, Sr. D.R.
Assessee by: Shri M.S. Chhajer, A.R.**

Date of hearing : 22-10-2021
Date of pronouncement : 18-11-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2014-15, arises from order of the CIT(A)-1, Ahmedabad dated 29-06-2018, in proceedings under section 271D of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

“1. The order passed by Ld.CIT (A) is bad and illegal as no valid and specific show cause notice was given hence, the same is in violation of law, equity and principle of natural justice.

2. Assessment order is time- barred as no tax payable was determined by the officer who passed the penalty order.

3. The Ld. CIT(A) has erred in law and on facts in upholding the penalty u/s 271D of the Act of Rs. 4,00,000/-.”

3. The fact in brief is that additional CIT has passed order u/s. 271D of the Act on 27th March, 2017 and levied penalty of Rs. 4 lacs on the assessee u/s. 271D on loan amount obtained in cash in violation of provision of section 269SS of the act. During the course of assessment, the Assessing Officer noticed that assessee had accepted certain loan amounting to Rs. 2,30,000/- in cash from Shri Anish Nagpal and Rs. 1,70,000/- from Shri Amit Purswani which was found to be in violation of provisions of section 269SS of the act. After drawing satisfaction the additional CIT has issued show cause notice which was returned un-served. Thereafter, the Assessing Officer has referred provision of section 269SS indicating that the assessee should not have accepted the loans or deposits, otherwise than by a account payee cheque or by account payee bank draft drawn in the name of the assessee, if the aggregate amount of such loan or deposit amount to Rs. 20,000/- or more therefore levied penalty u/s. 271D of the act of Rs. 4 lacs for accepting the aforesaid loan amount in cash.

4. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. The relevant part of the decision of ld. CIT(A) is reproduced as under:-

“3.4. I have carefully considered the entire facts of the case and it is observed that during the course of assessment proceedings u/s. 143(3) of the Act in the case of the above mentioned company, it is found that following loans exceeding Rs.20,000/- have been accepted in cash by the assessee company in contravention of provisions of section 269SS of the I.T. Act, from the following persons:-

(A) Anish Nagpal

<i>Date</i>	<i>Amount</i>
<i>05.04.2013</i>	<i>20,000</i>

06.04.2013	20,000
10.04.2013	10,000
20.06.2013	20,000
18.08.2013	20,000
26.08.2013	20,000
05.10.2013	20,000
12.10.2013	20,000
30.12.2013	20,000
Total	1,70,000

(B) Amit Purswani

Date	Amount
01.04.2013	20,000
20.04.2013	20,000
10.06.2013	20,000
15.06.2013	20,000
30.06.2013	20,000
21.07.2013	20,000
18.09.2013	20,000
30.09.2013	20,000
10.10.2013	20,000
28.10.2013	10,000
19.11.2013	20,000
30.11.2013	20,000
Total	2,30,000

In view of the section 269SS, it is held that the assessee had accepted certain loans amounting to Rs.2,30,000/- in cash from Shri Anish Nagpal and Rs.1,70,000/-from Shri Amit Purswani. The appellant Company has submitted that any amount received from the director in the case, the company would not fall with the preview of deposit for levy of penalty for violation of Sec. 269SS

*of the Act is not found to be correct, as in the section 269SS it is clearly mentioned that the body which is government or government undertaking is exempted from this and such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette is exempted. Hence, this company does not fall in exempted list of the section 269SS of the Act. In view of the above discussion and section 269SS of the Act, Assessing Officer was justified in levying penalty of Rs.4,00,000/- u/s. 271D of the Act for failure to comply with the provision of section 269SS of the Act. Hence, the penalty levied of Rs.4,00,000/- for the default is confirmed. **The ground of appeal is dismissed.***

5. During the course of appellate proceedings before us, the ld. counsel contended that the amount was required in emergency therefore same was obtained from the directors of the company and submitted that there was no violation of the provisions of section 269SS of the act. The ld. counsel has referred various decisions placed in the paper book submitted during the course of appellate proceedings before us. On the other hand, the ld. Departmental Representative submitted that from the ledger account of the parties it is clear that cash transactions were pertained to the loan account and there is nothing on record to substantiate that it was not loan transaction.

6. Heard both the sides and perused the material on record. Assessment u/s. 143(3) of the act was finalized on 21st December, 2016. Thereafter additional CIT has levied penalty u/s. 271D of the act on 27th March, 2017 of Rs. 4 lacs on account of accepting loan amounting to Rs. 2,30,000/- in cash from Shri Anish Nagpal and Rs. 1,70,000/- from Shri Amit Purswani in violation of provision of section 269SS of the act. After perusal of the material on record, it is noticed that during the year under consideration directors of the assessee company, Anish Nagpal has given Rs. 2,30,000/- and other director Shri Amit Purswani has also given Rs. 1,70,000/- on different dates as per the copies of ledger account placed in the paper book

filed by the assessee. It is also noticed that in the books of account these two ledger accounts were specifically named as Shri Amit Purswani loan account and Shri Anish Nagpal loan account. During the course of appellate proceedings before Id. CIT(A) the assessee has submitted that it has current account transaction with its director Shri Anish Nagpal and Shri Amit Purswani and it has not paid any interest amount in the account to its directors. However, the Id. CIT(A) has sustained the penalty holding that assessee company failed to substantiate that it fall in exempted list of the section 269SS of the act. We have gone through the judicial pronouncements referred by the Id. counsel. In the case of CIT vs. Idhyam Publications ITD 285 ITR 221(Hon'ble Madras High Court) it is held that the deposit and withdrawal of the money from the current account could not be considered as loan or advance. We find that facts of the case of the assessee are entirely different as in both the loan accounts there were only credit transaction on obtaining loan and there was no debit transaction. In the case of CIT vs. Natwarlal Purshottamdas Parekh 303 ITR 5 (Hon'ble High Court of Gujarat), in this case transaction with the family members on maturity of NSC were based on mere book entry and no cash amount was involved. However, the facts of the case of the assessee are entirely different wherein all the transactions of loan were based on cash basis. In the case of Hindustan Agencies Pvt. Ltd. Vs. Addl. CIT vide ITA No. 3387/Del/2014 dated 20-10-2016 in this case it was held that no penalty can be imposed u/s. 278D and 278E because the account was in the nature of current account. However, facts of the case of the assessee are entirely different as there was only cash receipt and was made on different dates from the directors of the assessee company. We have considered the fact

and material on record and noticed from the copy of ledger account submitted by the assessee that on the different dates assessee has obtained cash from the two directors and there was no repayment made by the assessee during the year, the aforesaid accounts cannot be said of the nature of current account as claimed by the assessee. Further, the assessee has not brought any material to substantiate that assessee has not committed any violation of section 269SS of the act, we do not find any infirmity in the decision of Id. CIT(A) in sustaining the penalty levied u/s. 271D of the act, therefore, this ground of appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18-11-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 18/11/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद