

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B' AT KOLKATA  
[BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER &  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER]**

**I.T.A. No. 2213/Kol/2019**  
Assessment Year: 2012-13

**Alipurduar Tea Co. Ltd.....Appellant**  
**85/1, Ballygunj Place, First Floor,**  
**Kolkata - 700019.**  
**[PAN: AACCA2002K]**

**Vs**

**ACIT, Range - 4, Kolkata.....Respondent**

**Appearances by:**

*Shri Amit Agarwal, AR appearing on behalf of the Assessee*

*Smt. Ranu Biswas, ACIT, appearing on behalf of the Revenue:*

Date of concluding the hearing : January 31, 2022

Date of pronouncing the order : March 16, 2022

**ORDER**

**PER SONJOY SARMA, JM**

This appeal filed by the assessee for A.Y. 2012-13 against the order dated 27.12.2019 passed by the Ld. CIT(A), Durgapur. The assessee in this appeal has taken the following grounds of appeal:

*"i. That on the facts and circumstances of the case and in law. the Appellate Order and the corresponding conclusion of the Ld. CIT-A, upholding of levy of Penalty of Rs.5379005.00, imposed u/s 271E, is bad in law, for being based on arbitrary, superficial, prejudiced observations, rather than the proven facts and the law applicable thereto.  
(Tax Effect Rs. 5370005.00).*

*ii. That on the facts and circumstances of the case and in law the Ld. CIT-A, while confirming the imposition of Penalty u/s 271E, as to loans repaid to the four group cum family run companies, has failed to appreciate that loan transactions having been accepted as true and genuine, after necessary verification, in the Scrutiny Assessment, few occasions of such deviation, had constituted merely a lapse of technical nature.  
(Tax effect, same as above - Rs.5370005.00).*

iii. That on the facts and circumstances of the case and in law, even otherwise, the Ld. CIT-A before upholding the levy of Penalty of Rs.5379005/- u/s 271E, ought to have appreciated that such magnitude of Repayments otherwise than by Account Payee Cheque had constituted only a minor part of gross repayment to the same lenders, of Rs.27199713.00. (Tax effect, same as above - Rs. 5370005.00).

iv. That on the facts and circumstances of the case and in law, even otherwise, the Ld. CIT-A. has also erred in not taking any cognizance of and thus, in fairly and judiciously applying his mind to, the proven occasion of the constraining cum reasonable causes, leading to such cash repayments. (Tax effect, same as above - Rs. 5370005.00)."

2. The brief facts of the case are that the assessment of the assessee was completed u/s 143(3) of the Income Tax Act on a total income of Rs. Nil on 11.03.2015. During the course of assessment proceeding, the AO observed that the assessee had repaid loans in cash exceeding the amount as prescribed u/s 269T of the IT Act to the following lenders:

"a. IIC Container Line Ltd.	Rs. 2270000/-
b. Indev Intermodal Carriers P. Ltd.	Rs. 30000/-
c. Crest Intermodal Carriers P Ltd.	Rs. 142605/-
d. Rahima Lands & Tea Co. P. Ltd.	Rs. <u>2936400</u> /-
	Rs. 5379005/-"

Accordingly, a show cause notice u/s 271E of the Act was issued to the assessee as to why the repayments in cash to the tune of Rs. 53,79,005/- should not be treated as having been made in violation of section 269T and why a penalty of the equal amount should not be imposed u/s 271E of the Act. The assessee replied the show cause notice vide order dated 03.06.2015. The AO finally imposed the penalty vide order dated 03.06.2015.

3. Against the order of penalty, the assessee has preferred an appeal before the Ld. CIT(A) which was dismissed on 29.07.2019, on the ground that repayment of loans in cash cannot be done and the cash

could have replaced through banking channel. Aggrieved by the said order dated 29.07.2019, the assessee is in appeal before us.

4. The ld. counsel for the assessee has submitted before us that the repayment had been made at the insistence of the group companies facing the urgent need of cash at their end and as such repayment of Rs. 53,79,005/- had been made and no unaccounted money has been routed through to make the repayments. Moreover, all the transactions between sister concerns, taking place in open manner, do not constitute loan repayments in cash and therefore is not violative of section 269T of the Act as these transactions are done at the insistence of lending group companies and same had not been done at the discretion of the appellant. The ld. AR of the assessee to defend his arguments relied on the following decision of coordinate benches:

- “1. Alipurduar Tea Co. Ltd. vs ACIT  
(ITA No. 1593/Kol/2019, order dated 26.11.2020*
- 2. Eastern Track Udyog Pvt. Ltd. vs JCIT  
(ITA No. 1690-1691/Kol/2016, order dated 31.01.2018*
- 3. ITO vs Cookme (Spice) Pvt. Ltd.  
(ITA No. 599/Kol/2009, 42/Kol/2010, order dated 16.11.2010”*

5. On the other hand, the ld. DR appearing on behalf of the revenue relied on the orders of the Ld. CIT(A) & AO.

6. After hearing the rival submissions and on careful perusal of the material available on the record, we find that the issue relates to imposition of penalty of Rs. 53,79,005/- u/s 271E of the Act. We observe from the facts before us that these transactions were between group related entities and are entered into out of business exigencies and done in an open manner, where no unaccounted money is involved. The transactions among sister concerns were held to be out of the purview

of section 269SS of the Act in view of decision of Hon'ble Madras High Court in the case of CIT vs Idhayam Publication Ltd. (2006) 285 ITR 221 (Mad.). We find merit in the contentions of the ld. counsel that these transactions are on current accounts operated between the sister concerns and are not in the nature of unsecured loans. Therefore, based on these facts, we are of the view that transactions between assessee and lending group of company(s) are on account of current account and hence do not fall in the ambit of section 269SS and 269T of the Act. We, accordingly, set aside the order of CIT(A) and direct the AO to delete the penalty.

**7. In the result, the appeal of the assessee is allowed.**

Order Pronounced in the Open Court on 16<sup>th</sup> March, 2022.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER

**Dated: 16/03/2022**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Appellant: Alipurduar Tea Co. Ltd.
2. Respondent: ACIT, Range-4, Kolkata
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT Kolkata Benches, Kolkata