

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI MAHAVIR PRASAD, JUDICIALMEMBER**  
**AND**  
**SHRI MANISH BORAD, ACCOUNTANT MEMBER**  
**VIRTUAL HEARING**

**ITA No.879 & 880/Ind/2018**  
**Assessment Year:2012-13**

ITO-2(3), Indore		Sukhwant Singh Babbar, Indore
(Appellant)	<b>बनाम/</b> Vs.	(Respondent )
P.A.N. AHZPB 2638 R		
Revenue by	Shri P.K. Mitra, CIT-DR	
Assessee by	Shri C.P. Rawka, CA	
<b>Date of Hearing:</b>	<b>06.01.2022</b>	
<b>Date of Pronouncement:</b>	<b>08.03.2022</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

The above captioned appeals filed at the instance of the Revenue for Assessment Year 2012-13 are directed against the orders of Ld. Commissioner of Income Tax(Appeals-III& I, Indore[in short 'Ld.CIT(A)] dated 31.08.2018 & 27.9.2018, respectively, which are arising out of the order u/s

147/143(3)& 271D of the Income Tax Act 1961 (In short the 'Act') dated 29.03.2016 & 29.3.2017 framed by ITO-2(3), Indore & JCIT, Range-2, Indore, respectively.

In ITA No.879/Ind/2018, the Revenue has raised the following only ground of appeal:

*“Whether on the facts and in the circumstances of the case, the Ld. CIT(A)-III, Indore was justified in deleting addition made by Assessing Officer of Rs. 3.80 crores under section 69D of the Income Tax Act and ignoring the findings in assessment order.”*

2. Facts, in brief, as culled out from the record are that the assessee is an individual who derives his income from Consultancy and Interest Income. Return of income was submitted declaring income at Rs. 10,33,110/- and the said return was accepted u/s 143(1). Search & seizure operation was carried out in the premises of one Shri Satish Sawhney of Delhi on 05.01.2012 and during the course of search, 10 receipts of Rs. 38 Lacs each were found signed by Shri Sukhwant Singh Babbar. With these receipts, there was a paper with headline as 'promissory note' dated April 2007 under which name of Shri Sukhwant Singh Babbar was written, however, unsigned. On receipt of information from CIT(C)-III, New Delhi by CIT-I, Indore, proceedings were initiated u/s 153C for A.Ys. 2006-07 to 2011-12 vide notices dated 26/08/2013. Shri Satish Sawhney approached the Hon'ble Settlement Commission who taxed Rs. 3.8 crores

pertaining to the purported Hundies in the year of the search i.e. A.Y. 2012-13 in the final order u/s 245D(4) dated 24.09.2014. The assessments u/s 153C for A.Ys. 2006-07 to 2011-12 were completed on 27.03.2015. During the course of proceedings u/s 153C, the copy of the order passed by Hon'ble ITSC u/s 245D(4) in the case of Shri Satish Sawhney was obtained and proceedings u/s 147 were initiated for A.Y. 2012-13 by issuing notice u/s 148 on 25/03/2015, against which return of income was filed by assessee stating that the original return filed may be treated as return in response to the notice u/s 148. The reasons recorded were then provided to the assessee on 29.06.2015 and against the same, the objections were filed the assessee which were disposed off by ACIT-2(1) by passing speaking order dated 03.08.2015. The proceedings were then carried on and all the hearings were duly attended and notices were timely complied with by the assessee. The ld. Assessing Officer noted that on the said receipts, no due date was mentioned and these documents were confronted to Shri Satish Shawhney who in the statement stated that this was loan given by him and his family to the assessee. However, the assessee claimed that loans were more than 25 years old. Ld. Assessing Officer also noted that Hon'ble Settlement Commission rightly observed that it is inconceivable that a person (Shri Satish Shahwney) would allow an amount of Rs.3.80 crores to remain outstanding for such a long period. Thus, the assessment order u/s 147 r.w.s. 143(3) was passed

by the Ld. ITO-2(3), Indore on 29.03.2016 by making an addition of Rs. 3,80,00,000/- u/s 69D of the Income Tax Act, 1961. Being aggrieved with the above addition, the assessee went into appeal before Commissioner of Income Tax (Appeals), Indore and the Ld. CIT(A) deleted the addition noticing that since Rs. 3.8 crores was brought to tax in the hands of Shri Satish Sawhney as a consequence of the order of the Hon'ble Settlement Commission, the same amount cannot be again taxed as assessee's income and the ld. Assessing Officer failed to bring on record any concrete evidence to show that the said loan was taken in the period relevant to the Assessment Year under consideration. Being aggrieved, the Revenue is in appeal before this Tribunal.

3. Before us, ld. CIT-DR relied upon the order of the Assessing Officer and submitted that the ld. Assessing Officer on the basis of the statement of Shri Satish Shawhney and observation of Hon'ble Settlement Commission rightly made the addition.

4. Per contra, learned Counsel for the assessee relied upon the order of the learned CIT(A) and submitted that the assessee had through documentary evidences explained the said 10 receipts, therefore, the addition made by the Assessing Officer was wrong and the order of the learned CIT(A) deserves to be upheld.

5. We have considered rival contentions and gone through the material available on record. We find that Search & seizure operation was carried out in the premises of one Shri Satish Sawhney of Delhi on 05.01.2012. During the course of search, 10 type written receipts of Rs. 38 Lacs each were found signed by the assessee. These receipts do not show the date of issue of receipt. Due date has also been left blank. Learned counsel for the assessee explained that it may be perused on the lines that these receipts are on letter pad of the assessee which show mono as 'The Shri Ishar Group' and below the mono is address as 314, Bhaghirathpura Indore 452003 whereas below the address are two telephone numbers and one fax number. These telephone numbers are six-digit numbers. It is pertinent to mention here that six digits phone numbers have been dispensed with more than a decade back. With these receipts, there is a paper with headline as 'promissory note' under which name of Shri Sukhwant Singh Babbar has been typed written, but it has not been signed. Moreover, the date part is April 2007 (date component not written). We find that to investigate the above receipts, the investigation wing of Delhi summoned the assessee asking to explain about the receipts and the assessee duly complied with to the summons and casted a doubt on the documents relating to receipt of loan. The assessment proceedings were initiated in the case of Shri Satish Sawhney which ultimately travelled to the Honorable Settlement Commission. The Honorable Settlement Commission

in its order u/s 245D(4) assessed the sum of Rs. 3,80,00,000/- in the hands of Shri Satish Sawhney. We find that in the instant case, notices u/s 153C for the assessment years 2006-07 to 2011-12 were issued on 26.08.2013 i.e., well before 30<sup>th</sup> September 2013. Assessee's return of income for the A.Y. 2012-13 was before the Ld. Assessing Officer as on the date of issue of notice u/s 153C for six years. Thus, it is clear that the ld. Assessing Officer had ample time to issue notice u/s 143(2) for the A.Y. 2012-13 but probably the ld. Assessing Officer did not find it necessary to issue the said notice. Further, we find that Sec. 69D reads as under: -

*“Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be:*

*Provided that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount”*

6. Above part of statute starts with the phrase “*where any amount is borrowed on a hundi*” which means that the prime factor governing the section is an amount should be borrowed i.e., genuineness of the transaction is must for invoking this section. In this context, we place reliance on the decision of Honourable Madras High Court in the case of S.K.S. Rajamani Nadar v/s CIT 216 ITR 696 wherein the Hon'ble Court held that section 69D cannot be invoked unless it is proved beyond doubt that the transaction has actually taken place during the period

relevant to the concerned assessment year. We find that in the instant case, the Revenue has not brought on record any material establishing that the assessee has actually received the sum of Rs. 3,80,00,000/- during the period relevant to assessment year 2012-13. Therefore, we find from the perusal of the receipts & promissory note (unsigned) that the receipts relied upon do not fall in the category of 'hundis' in any manner for the reasons discussed herein below. Further, another aspect worth consideration in this regard is the theory of probability adopted by the investigation wing of Delhi. The relevant part of appraisal report supplied to the assessee by the department is reproduced herein below:

*“From the above, it appears that Shri Satish Sawhney had given loan of Rs. 3.80 crores to Shri Sukhwant Singh Babbar and got the undated signed receipts and made a promissory note in April 2007 stating that “Sukhwant Singh Babbar confirmed of having a sum of Rs. 3.80 crores from Satish Sawhney and repayment thereof is executed in 10 Hundis for Rs. 3.80 crores along with interest within 2 years from the date of execution of this promissory note”. While going through the documents it is seen that these receipts are recently given by Shri Sukhwant Singh Babbar to Shri Satish Sawhney. It also appears that the loan was given in cash. Further it is also unbelievable that Shri Satish Sawhney was in possession of Rs. 3.80 crores in the late 80’s. This is a cash loan given to Shri Sukhwant Singh Babbar in April 2007. The Assessing Officer may examine and verify the contents of the hundis and promissory note.”*

7. From perusal of the above, we find that the Revenue was not convinced with as regard to the transaction, if any, carried out and the period during which such transaction was carried out. Thus, the theory being hypothesis was not conclusive.

Therefore, application of Section 69D was unjustified. Our view finds support from the decision of Hon'ble Andhra Pradesh High Court in the case of *CIT vs Dexan Pharmaceuticals Pvt Ltd, 214 ITR 576 (AP)* wherein the Hon'ble High Court set out the characteristics as under:

- 1) *There are always three parties to such transaction. They are the drawer, the drawee and the payee. The drawer cannot himself also be the drawee. If the transaction is bilateral it is a very strong indication to show that it is not a hundi transaction.*
- 2) *A hundi is payable to satisfy a person or order but negotiable without endorsement by the payee.*
- 3) *The holder of a hundi is entitled to sue on its basis without any endorsement in his favour.*
- 4) *A hundi, once accepted by the donee, can be negotiated without endorsement.*
- 5) *In the case of loss of a hundi, the owner can claim duplicate or triplicate from the drawer and present the same to the drawee for claiming payment.*
- 6) *A hundi is normally in oriental language as per the mercantile custom. The above characteristics emanate from the long standing custom of hundi transactions.*

8. On the above questions, Hon'ble High Court held that the documents were in English and the transactions were not between three parties. They were bilateral. The transactions were on the lines of a promissory note. The documents had waived the notice of dishonor and no grace period was granted. This was also indicative of the transaction not being a hundi transaction. Section 69D was not applicable.

9. We find that the facts of the assessee's case are identical to the above reported case of *Dexan Pharmaceuticals Pvt.*

*Ltd(supra)* and therefore, the provisions of sec. 69D were not applicable in the case of the assessee.

10. We further find that Hon'ble Madras High Court had occasion to examine the issue relating to hundi vis-a-vis promissory note in the case of *CIT vs K.P. Abdullah 240 ITR 947 (Mad)* wherein the Hon'ble High Court decided the issue as under:

*“The assessee borrowed from four lenders the sums of Rs.10,500, Rs.12,400, Rs.7500 and Rs.7500. The repayments were not made by cheque but by cash. The Departmental authorities held that these amounts fell within the mischief of section 69D of the Income Tax Act, 1961 and accordingly, added these amounts to the income of the assessee. On appeal by the assessee, the Appellate Tribunal deleted these additions as not hit by section 69D of the Act. On a reference:*

*Held, affirming the decision of the Appellate Tribunal, that the language in which the instrument is written is not decisive. Though normally hundis are written in the vernacular language as the traders who used hundis in the past by and large were illiterate in English, that does not lead to the conclusion that if a document which is otherwise a hundi is written in the English language, such a document cannot be regarded as a hundi. It is the contents of the document that matter and not the language in which it is written.*

*Held further, that the instrument in question contained a definite promise to pay which promise was unconditional; it was signed by the maker and the sum of money to be paid was certain; the identity of the payee was set out and the provision was made for payment to him or to his order. The time of payment however was not merely on demand but at the expiry of the period specified in the instrument. These features answered the definition of promissory note contained in section 4 of the Negotiable Instruments Act, 1881, read with para 2 of section 5 of the Act. Section 5 of the Negotiable Instruments Act defines a bill of exchange and para 2 thereof provides that a promise or order to pay is not “conditional” within the meaning of the section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind is certain to happen, although*

*the time of its happening may be uncertain. The fact that the borrower was to pay the amount after the specified number of days therefore did not render the document a conditional document to pay. It remained an unconditional promise to pay. Section 69D of the Act was therefore clearly inapplicable and the Tribunal had reached the right conclusion in this regard.*

11. We find that the similar issue came up before the Honorable Madras High Court in the case of *CIT vs Grah Laxmi & Co., 240 ITR 952 (Mad)*. The catch note of the said decision is as under:

*“INCOME—HUNDI—AMOUNT BORROWED OR REPAID OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE—DEEMED TO BE INCOME OF PERSON BORROWING OR REPAYING—CONSIDERING CONTENTS OF DOCUMENT IT CANNOT BE HELD TO BE HUNDI—INCOME TAX ACT, 1961, s.69D.”*

12. We find that the Ld. Commissioner of Income Tax (Appeals) while deciding in the subject matter recorded the findings in proper manner appreciating the aforesaid facts of the case in the light of the relevant judicial pronouncements. The relevant findings of the ld. CIT(A) are reproduced hereunder: -

*“Here the important point to be considered is that receipt of loan by a person cannot be held as his income. Further, as Rs. 3.8 crores has been brought to tax in the hands of Shri Satish Sawhney as a consequence of the order of the Hon’ble Settlement Commission, the same amount cannot be again taxed as appellant’s income.*

*The provisions of section 69D are attracted if the amount is borrowed or repaid otherwise through an account payee cheque drawn on a bank during the aforesaid previous year. From the order of the Hon’ble ITSC passed in the case of Shri Satish Sawhney it is seen that the Hon’ble ITSC has clearly stated that the period to which the*

*said hundies of Rs. 3.8 crores belong to cannot be ascertained due to the peculiar facts in the case and to settle the matter they brought to tax the amount pertaining to hundies i.e. Rs. 3.8 crores in the year of search, which is A.Y. 2012-13.*

*The powers conferred on the Settlement Commission are entirely different. The Assessing Officer has taxed Rs. 3.8 crores u/s 69D on account of loan borrowed in cash through hundies in A.Y. 2012-13 merely on the basis of the above observations of the Settlement Commission as discussed above in paras 3.2 and 3.3 without any concrete evidence to show that the said loan was taken in the period relevant to the Assessment Year under consideration. In fact, the evidence in terms of the seized documents prima facie shows the transaction pertaining to an earlier period.*

*In view of the above facts and circumstances of the case, I am of the opinion that the addition of Rs. 3.8 crores made u/s 69D on account of loan borrowed in cash through hundies in A.Y. 2012-13 from Mr. Satish Sawhney is not sustainable and is therefore deleted.”*

13. Before us, the above findings of ld. CIT(A) could not be controverted by the Revenue by bringing any contrary material on record. On consideration of above and in the light of the judicial pronouncements (*supra*), we are of the view that the addition made by the Assessing Officer by invoking section 69D was bad in law and the action of Ld. Commissioner of Income Tax (Appeals) deleting this addition contains no infirmity and the same deserves no interference. Thus, the only ground raised by the Revenue stands dismissed. Appeal of the Revenue is dismissed.

ITA No. 880/Ind/2018 (Penalty u/s 271D):

The Revenue has raised the only following ground of appeal: -

*“Whether on the facts and in the circumstances of the case, the Ld. CIT(A)-I, Indore was justified in deleting the penalty of Rs. 3.80 crores levied u/s 271D.”*

14. Facts, in brief, are that consequent upon the assessment done by the Ld. ITO-2(3), Indore u/s 147 r.w.s 143(3), the penalty proceedings u/s 271D of the Income Tax Act were initiated on the allegation that the assessee has received cash loan of Rs. 3.80 crores in contravention to the provisions of section 269SS of the Income Tax Act, 1961. Show Cause notice was issued to the assessee for levy of penalty u/s 271D on 28.09.2016 which was timely responded by the assessee. The submissions were made by the assessee which were not accepted by the Ld. JCIT and subsequently, he passed the penalty order on 29.03.2017 by levying the penalty of Rs. 3.80 crores u/s 271D of the Income Tax Act, 1961. Being aggrieved with the above penalty, the assessee went into appeal before the ld. Commissioner of Income Tax (Appeals)-I, Indore and ld. CIT(A) deleted the entire penalty by observing that no penalty u/s 271D is leviable in assessee's case. Being aggrieved, the Revenue is in appeal before this Tribunal.

15. Before us, ld. CIT-DR relied on the order of the JCIT whereas learned counsel for the assessee relied on the order of the ld. CIT(A) and submitted that in the light of the fact that the Assessee had not received any loan or deposit in contravention to section 269SS during the period relevant to A.Y. 2012-13, therefore, the penalty under section 271D was baseless.

16. We have heard rival contentions of both the sides and perused the material available on record. While deciding the quantum addition in ITA No.879/Ind/2018 (above), we have held that at no point of time, it was proved that the assessee had actually received any loan or deposit specifically during the period relevant to Assessment Year 2012-13 as there was no material evidence in respect of the same. Since we have already confirmed the deletion of quantum addition by ld. CIT(A) while deciding ITA No.879/Ind/2018 (*supra*), the very foundation for initiation of penalty under section 271D has now become baseless. Therefore, we do not find any reason to interfere with the ld. CIT(A)'s action i.e. deletion of penalty u/s 271D of the I.T. Act. Accordingly, we confirm the order of the ld. CIT(A). Thus, the only ground raised by the Revenue stands dismissed.

17. In result, the departmental appeals i.e. ITA Nos.879 & 880/Ind/2018 stand dismissed.

Order was pronounced as per Rule 34 of ITAT Rules, 1963 on 08.032022.

Sd/-

(MAHAVIR PRASAD)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 08.032022  
Ivyas!

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,

Sr. Private Secretary, I.T.A.T., Indore