

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1469/AHD/2019
निर्धारण वर्ष/Asstt. Year:2015-2016

D.C.I.T., Central Circle-2, Vadodara-390007.	Vs.	M/s.Akshar PHC Realcon, M/s.Dalal & Co., 161, 1 st Floor, Gulalwadi, Kika Street, Mumbai-400004. PAN: ABBFA0975G
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(Applicant)		(Respondent)
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Assessee by	:	Shri K.P. Singh, A.R
Revenue by	:	Shri V.K. Singh, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **07/02/2022**
घोषणा की तारीख / **Date of Pronouncement**: **17/02/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)12, Ahmedabad, dated 04/07/2019 arising in the matter of penalty order passed under s. 271D of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The only issue raised by the Revenue is that the Ld. CIT(A) erred in deleting the penalty levied by the AO u/s 271D of the Act, for Rs. 75,00,000/- on account of cash loan received by the assessee.

3. The facts in brief are that the assessee in the present case is a partnership firm. There was a search and seizure operation u/s 132 of the Act, at the group of Akshar at Baroda on 22/09/2015. During the search proceedings, various documents were found. One of the document was showing the receipt of loan from the partner amounting to Rs. 75,00,000/- in the books of the assessee. As per the AO the cash loan received by the assessee from the partner is prohibited under the provision of section 269 SS of the Act and in the event of violation of such provision, there is a penalty under the provisions of section 271D of the Act. Accordingly, the AO vide notice dated 26/06/2018 u/s 274 r.w.s 271D of the Act sought clarification from the assessee. The assessee in response to such notice vide letter dated 11/12/2018 submitted that the partners have contributed the amount of capital in the firm for Rs. 75,00,000/- and not the loan as alleged by the revenue. The assessee to this effect has also filed the confirmation of the partners.

3.1 It was also submitted that one of the partner Shri Dilip Tambadia has introduced capital on behalf of other partner therefore it was mentioned as "A.D. Patel (Loan)" i.e Dilip Patel. Accordingly, the assessee contended that the provision of section 269SS cannot be applied on the introduction of capital.

3.2 However, the AO disregarded the contention of the assessee that as per the seized document found during the course of search and seizure operation, the amount of loan was clearly mentioned therein and therefore the same cannot be interpreted as the amount of capital contribution. Accordingly, the AO levied the penalty of Rs. 75,00,000/- under the provision of section 269SS r.w.s. 271D of the Act.

4. Aggrieved assessee preferred an appeal to the Ld.CIT(A).

4.1 The assessee before the Ld. CIT(A) submitted that the partner Shri Dilip Patel has contributed the capital in the partnership firm which is evident from the confirmation of the partner. Accordingly, the provision of 269SS cannot be applied.

4.2 The assessee alternatively also contended that it has received the amount in cash under the bona-fide belief that the partner and firm are one of the same person. Therefore, on accepting the loan from the partner the provision of section 269SS of the Act cannot be invoked.

5. The Ld. CIT(A) after considering the submission of the assessee deleted the penalty levied by the AO by observing as under:

5.5 *In this regard I have perused the provisions of section 269SS, 271D and the case laws relied upon by the appellant which are reproduced as part of the appellant submission] From the copies of ledger in the books of appellant firm, it is seen that the ledger of current account of Shri Dilip Patel shows cash receipt of Ra. 75,00,000/- out of total payment of Rs.2,79,22,500/-. Similarly the confirmation of account from Shri Dilip Patel to the appellant firm shows cash payment of Rs.75,00,000/-. In my considered opinion they do not establish that the cash payment by the partners and receipt of the same by the appellant firm was towards the capital account of the partners. However, from the perusal of the decision of the jurisdictional ITAT, Ahmedabad in **Shrepak Enterprises Vs UCIT** [1998] 64 1TD 300 (AHD.) in ITA No. 693 (AHD.) of 1995 [AY 1991-9-2], it noted that the Hon'ble ITAT has held that payment of amount made by a partner to the firm is payment to self and does not partake the character of loan or deposit in general law and therefore the provision of section 269SS are not applicable and the penalty u/s **271D** cannot be imposed as under:*

In view of the departmental Circular No. 387 dated 6-7-1984, which is a clarification of binding nature on the departmental authorities, section 271D was brought in to cover those situations where unaccounted cash found in the course of search or even explained by the taxpayers as representing loans taken or deposits made by various persons. This particular section was brought in with a view to counter such tactics of the assesses in question. In the instant case, it was not a case where any search and seizure had taken place and it was also not a case of explaining deposits or loans taken through cash in past.

The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. A partner may be a debtor or a creditor of his co-partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer. Therefore, it was obvious that in the instant case, there could not be a relationship of a debtor and creditor between the firm and the partners.

Further, the department had nowhere challenged that the loans advanced were not genuine. The loans were genuine and they had not been made by one person to another person; they had been made by that person to himself in the eyes of law. Therefore, the payment of the amount made by a partner to a firm was the payment itself to self and did not partake the character of loan or deposit in general law. Therefore, the provisions of section 269SS were not applicable to the facts of the instant case, and no penalty was imposable under section 271D. Further, the assessee could be under genuine impression that advancing of loan by a partner to firm was not a transfer from one person to another and, hence, there was no violation of provisions of section 269SS. Hence, the penalty imposed was cancelled.

5.6 From the perusal of the said case law I find that the appellant is fully covered and protected by the case laws relied upon by it. Thus as the provisions of section 269SS are not attracted in the case, the penalty u/s 271D could not have been imposed.

6. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

7. The Ld. DR before us contended that as per the seized document the word loan was very much mentioned. Therefore, there is no scope of having any doubt about such loan and treating same as capital. The Ld. DR vehemently supported the order of the AO.

8. On the other hand the Ld. AR before us contended that the amount shown as loan in the seized document was recorded in the books of accounts as capital contribution. This fact can also be established from the confirmation filed by the partners as well as from the financial statement. The Ld. AR vehemently supported the order of the Ld. CIT(A).

9. We have heard the rival contention of both the parties and perused the materials available on record. Under the Partnership Act 1932, the partners are personally liable for the acts done by the firm. In this connection relevant provision of Section 25 of the Partnership Act, 1932, may also be considered, which runs as follows:

'25. Liability of a partner for acts of the firm. - Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.'

9.1 Thus in such a situation when the partner has given loan to the firm, the same cannot be construed as loan within the meaning of provision of section 269SS of the Act. In holding so we draw support and guidance from the order of Ahmedabad Tribunal reported in 64 TTD 300 (AHD) in ITA No.693(AHD) of 1995 (A.Y. 1991-92) which has been reproduced somewhere in preceding paragraph.

9.2 It is also pertinent to note that the assessee in the books of accounts has recorded the impugned amount of Rs. 75,00,000/- as capital contribution. It is always possible that the amount of loan can be converted into capital at any point of time with the mutual understanding of the partners. Thus even the word loan mentioned in the seized document but the same cannot be interpreted as loan in the given facts and circumstances. It is for reason that the assessee by the subsequent act has proved based on the financial statement that it was capital contribution which constitute a good and sufficient cause for not imposing the penalty. Thus, we deemed it fit and proper to hold that there was no contravention of the provision of law so as to attract the penalty under the provision of section 271D of the Act. In view of the above, we are convinced with the findings of the Ld. CIT(A) and therefore we decline to interfere in his order. Thus the AO is directed to delete the penalty levied by him. Hence, the ground of appeal of the Revenue is dismissed.

10. In the result, the appeal of the Revenue is hereby **dismissed**.

Order pronounced in the Court on 17/02/2022 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/02/2022
Manish

आदेश की प्रतिलिपि भेजित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR,
ITAT,
6. गार्ड फाइल / Guard file.