

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SRI PRASHANT MAHARISHI, AM AND SRI SANDEEP SINGH KARHAIL, JM

ITA No. 3112/Mum/2019
(Assessment Year 2013-14)

ITA No. 3037/Mum/2019
(Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Cen Cir 7(3), Room No. 655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Macrotech Developers Limited [Successor to Sahjananad Hi tech Construction Private Limited] 412, Vardhman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400 011
(Appellant)		(Respondent)
PAN No. AAEC1936F		

Assessee by	:	Sri Niraj Seth, AR
Department by	:	Sri Hoshang B. Irani, DR

Date of hearing:	01.03.2022
Date of pronouncement :	24.3.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are two appeals filed by the Dy. Commissioner of Income-tax, Central Circle 7(3), Mumbai for Assessment Years 2013-14 and 2014-15 against the deletion of penalty under section 271D of the income-tax Act, 1961 (hereinafter referred to as 'Act') in case of assessee. Both the appeals involved identical facts and therefore, they are heard together and dispose off by this common order.

02. ITA No. 3112/Mum/2019 is for Assessment Year 2013-14, wherein the penalty under section 271D of the Act levied by the Assessing Officer of ₹1,05,36,585/- is deleted by the order of the Commissioner of income-tax (Appeals)-49, [in short CIT(A)] Mumbai dated 28th February, 2019.
03. Similarly, in ITA No.3037/Mum/2019 is for Assessment Year 2014-15, wherein the penalty under Section 271D of the Act levied by the Assessing Officer of ₹1,17,23,991/- is also stands deleted by the CIT(A)-49, Mumbai dated 12.02.2019.
04. Therefore, the LD Assessing Officer is aggrieved with that and has preferred both these appeals.
05. The grounds of appeal raised by learned Assessing Officer are as under :-

for Assessment Year 2014-15

“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 ₹1,17,23,991/- under section 271D holding that there was reasonable cause under section 273B for entering on transaction to transaction basis the given case for the existence of reasonable cause under section 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. 171/172/202/2013/218/219 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?

For Assessment Year 2013-14

1. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) is justified in deleting the penalty of ₹1,05,36,585/- under section 271D holding that there was reasonable cause under section 273B for entering on transaction to transaction basis in the given case for existence of reasonable cause under section 273B which led to the exigency of contravention of provisions of Sections 269SS/ST?*

2. *Whether on the facts and in the 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 in the 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. 171/172/202/2013/218/219 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?"*

06. The facts for Assessment Year 2013-14 show that assessee is engaged in the business of land development and construction of real estate properties. It was assessed under section 143(3) of the Act on 30 March 2016 by the Dy. Commissioner of income tax, Central Circle 7(3), Mumbai.

07. The fact shows that there was search and seizure action under section 132 of the Act on 10 January 2011, wherein undisclosed transaction of ₹200 crores were found. The learned Assessing Officer also referred for levy of penalty under section 271D of the Act vide letter dated 28 April 2016 to the Jt. Commissioner of income tax, Range-7, Mumbai. The intimation was that assessee has accepted loans and deposits from various sister concerns through journal entries. As such, loans were not taken through an account payee cheque or account payee bank drafts, According to the Id AO, assessee has violated the provisions of section 269SS of the Act and therefore liable to penalty with respect to loan taken from four different group entities amounting to ₹1,05,50,385/-.
08. Therefore, learned Jt. Commissioner of income tax [the LD Adjudicating Authority] issued show cause notice to the assessee on 29 July 2016.
09. Assessee filed a submission stating that assessee has not accepted any loan as well as there is no violation of provisions of section 269SS of the Act. Assessee also submitted raised several judicial precedents before the learned Adjudicating Authority. The learned Adjudicating Authority rejected the contention of the assessee and held that there is a violation of Provisions of Section 269SS of the Act and in absence of any reasonable cause, the assessee is exposed to the penalty under section 271D of the Act equivalent to the amount of loan. Accordingly, the penalty order under section 271D was passed on 30th September, 2016 levying the penalty of ₹1,05,36,585/-.
010. The assessee preferred the appeal before the learned CIT (A) who passed an order dated 28 February 2019. The learned CIT (A) after considering the decision of the sisters concern of assessee on identical facts and circumstances, he held that the journal entries resulting into the credit liability into the books of the assessee were held as loan acceptance by Id Adjudicating authority, therefore whether on such transaction where no loans are accepted but merely journal entries are passed is reasonable cause even if there is a violation of provision of section 269 SS of The Act. He held that there is a reasonable cause as envisaged u/s 273 B of the Act and therefore no penalty can be levied.

Accordingly, he deleted the penalty of ₹1,05,36,585/- levied under section 271D of the Act. Therefore, the Assessing Officer aggrieved with that order and is in appeal before us.

011. The learned Departmental Representative vehemently supported the orders of the learned Jt. Commissioner of income tax.
012. The learned Authorised Representative submitted that identical issue has been considered in case of the assessee's sister concern wherein by series of decisions of co-ordinate Benches the identical penalties were deleted holding that acceptance of loan by journal entry is reasonable cause under section 273B of the Act and therefore, assessee cannot be penalized under section 271D of the Act. He therefore submitted that this issue is squarely covered in favour of assessee of all these decisions.
013. We have carefully considered the rival contentions and perused the orders of lower authorities. We find that identical issue has been considered by the co-ordinate Bench in case of assessee in DCIT (CC) 7 (3) , mumbai versus m/s. Macrotech developers ltd., (successor to m/s. Bellissimo crown buildmart pvt. Ltd. In ITA NO.3038/MUM/2019 AND ITA NO.3046/MUM/2019 AND ITA NO.3049/MUM/2019 AND ITA NO.4054/MUM/2019 dated - 25 November 2021 as under:-

“3.2. The ld. AO while completing the scrutiny assessment u/s.143(3) of the Act accepted the genuineness of the aforesaid transactions and also accepted the fact that these entries were passed by the assessee company in the normal course of its business. Accordingly, the ld AO did not proceed to make any addition with regard to the aforesaid transactions. Even the claim of deduction on account of advertisement expenses incurred by the assessee company through the passing of adjustment entries as detailed above, were duly allowed as deduction by the ld. AO. After the completion of assessment, the ld. AO forwarded the papers to

the ld. Addl. CIT for initiating penalty proceedings u/s.271D of the Act, as, in his opinion, the aforesaid adjustment entries were passed by way of journal entries which are in violation of provisions of Section 269SS of the Act. Accordingly, the ld. Addl. CIT proceeded to levy the penalty u/s.271D of the Act amounting to ₹ 66,01,707/- being the value of credit entries of the transactions with aforesaid three parties. The assessee submitted that there is no violation of provisions of Section 269SS of the Act in respect of the aforesaid transactions. It was specifically pointed out that the assessee had passed journal entries for creation / assigning of debt and liabilities and that the creation / assigning of debt and liabilities vide journal entries does not attract the provisions of Section 269SS of the Act. The ld. CIT(A) gave a categorical finding that this is not a case of loan or deposit taken or repaid and that it is only a case of assigning of receivables. The ld. CIT(A) observed that M/s. HT Media Ltd. (HTML) entered into an agreement with Lodha Developers Pvt. Ltd.(LDPL) according to which 75% of the value of invoices raised by HTML for advertising services have to be adjusted against the part payment by LDPL to HTML and the balance amount of 25% is to be paid by the assessee company. Accordingly, the assessee company transferred 75% of the value of advertisement services to LDPL for adjustment against the down payment paid by LDPL to HTML and the balance amount was paid through proper banking channels. M/s. Mangal Paper Mart (MPM) entered into an agreement with Lodha Novel Buildfarms Pvt Ltd. (LNBPL) according to which 50% of the value of advertisement services in case of each invoice is to be adjusted against the flat booked by MPM in LNBPL and the balance amount of the invoice is to be paid. Accordingly, the assessee company transferred 50% of the value of advertisement services to LNBPL for adjustment against the flat booked in LNBPL and the balance amount was paid

through proper banking channels. Mr. Maninder Chhabra is an employee of the assessee company who booked a flat in a project which was developed by Lodha Developers Pvt. Ltd., the amounts payable to Mr. Maninder Chhabra on account of vested employee benefits were adjusted against the amounts receivable from flat booking in Lodha Developers Pvt. Ltd. M/s. Alakh Advertising & Publicity Pvt Ltd (AAPPL) entered into an agreement with Shreeniwas Cotton Mills Ltd (SNCML) according to which 50% of the value of advertisement services in case of each invoice is to be adjusted against the flat booked by AAPPL in SNCML and the balance amount of the invoice is to be paid. Accordingly, the assessee company transferred 50% of the value of advertisement services to SNCML for adjustment against the flat booked in SNCML and the balance amount was paid through proper banking channels. Jawala Real Estate Pvt. Ltd. is a sister concern of the assessee which had given advance to employee for expenses to be incurred at the project developed by the assessee. However, the bills received were for the project being developed in Sahajanand Hi-Tech Constructions Pvt. Ltd. Therefore, adjustment was given effect by way of a journal entry.

3.3. The ld. CIT(A) placed reliance on the decision of the Hon^{''}ble Jurisdictional High Court in the case of CIT vs. Triumph International (I) Finance Ltd., reported in 345 ITR 270 wherein it was held that the transactions through journal entries are also hit by the provisions of 269SS and 269T of the Act. The decision of the Hon^{''}ble Bombay High Court rendered on 12/06/2012 is significant and prior to this judgment, there were series of consistent decisions on Sections 269SS and 269T of the Act holding that mere passing of journal entries will not amount to receipts / payments otherwise done by account payee cheques or draft and accordingly, the same were not in contravention of provisions of 269SS and 269T of the

Act and consequently no penalty u/s.271D and 271E of the Act could be levied for the same respectively. The Hon''ble Jurisdictional High Court held that the reliance placed on these series of consistent decisions of 269SS and 269T of the Act constituted reasonable cause and accordingly, it held that though journal entries fall within the ambit of provisions of 269SS and 269T of the Act, still in view of series of consistent decisions rendered on the said subject, the Hon''ble High Court held that the same would constitute reasonable cause within the meaning of Section 273B of the Act as assessee was made to believe by way of series of decisions rendered on the subject. The ld. CIT(A) also placed reliance on the Mumbai Tribunal decision in the case of Lodha Builders Pvt. Ltd.,(Group company of the assessee on the very same issue) wherein this Tribunal had given seven instances of journal entries which could be considered as a reasonable cause within the meaning of Section 273B of the Act. The same are as under:-

a) Alternate mode of raising funds

b) Assignment of receivables

c) Squaring up of transactions

d) Operational efficiencies / MIS purpose

e) Consolidation of family member debts f) Correction of errors

g) Loans taken in cash

3.4. The ld. CIT(A) gave a categorical finding that the transactions carried out with the aforesaid three parties i.e. Jawala Real Estate Pvt. Ltd., Shreeniwas Cotton Mills Limited & Lodha Developers Private Limited, which are subject matter of levy of penalty

u/s.271D of the Act were carried out as an act of assigning of receivables or extinguishment of mutual liability of paying / receiving the amounts by the assessee and its sister concern and its sister concerns to third parties. The ld. CIT(A) held that even assuming that this act is in contravention of provisions of Section 269SS of Act, there is reasonable cause for doing the same and therefore, would not attract the provisions of Section 269SS of the Act. The ld. CIT(A) also took cognizance of the fact that the expression “reasonable cause” has not been defined in the Act, but it has got a wider connotation and thus a sufficient cause. He placed reliance on the decision of the Hon’ble Supreme Court in the case of Azadi Bachao Andolan vs. Union of India reported in 252 ITR 471 wherein it was held that reasonable cause is a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances without negligence or in connection or want of bonafide. The ld. CIT(A) also placed reliance on the decision of the Hon’ble Delhi High Court in the case of Woodward Governor India Pvt. Ltd., vs. CIT reported in 118 Taxman 433 wherein the expression “reasonable cause” was described as a probable cause and it means “ an honest belief founded upon the reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.” Thereafter, the ld. CIT(A) also placed reliance on the decision of the Jurisdictional High Court in the case of Ajinath Hitech Builders Pvt. Ltd, and others (Group company of the assessee) dated 06/02/2018 in ITA Nos. 171, 172, 202, 203, 218 & 2019/Mum/2015 wherein it was clearly held that since the decision of the Hon’ble Bombay High Court in the case of Triumph International Finance (I) (345 ITR 270) was rendered on

12/06/2012, it is to be held for prior to that, the assessee was under a bonafide belief that the transactions through journal entries were not hit by the provisions of Section 269SS and 269T of the Act. Hence, there was a reasonable cause available to the assessee within the meaning of Section 273B of the Act. The ld. CIT(A) also gave a categorical finding that neither the ld. AO nor the Addl. CIT (who levied the penalty) had made out a case of any malafide intention on the part of the assessee nor any adverse finding has been brought on record with regard to journal entries passed by the assessee in its books for adjustment / assigning of receivables. Accordingly, the ld. CIT(A) deleted the levy of penalty u/s.271D of the Act. Aggrieved, the Revenue is in appeal before us.

3.5. We find the entire gamut of the case had been dealt in detail by the ld. CIT(A) in his order which have already been narrated hereinabove. The same are not reiterated herein for the sake of brevity as they remain undisputed. We find from the aforesaid factual narration and the basis of passing journal entries by the assessee in its books that these entries are merely passed for squaring up of transactions or adjustment of entries. This categorical finding given by the ld. CIT(A) in his order has not been controverted by the Revenue before us. Yet another categorical finding recorded by the ld. CIT(A) which remain uncontroverted by the Revenue before us is that these transactions were not made by the assessee with a malafide intent to evade tax and 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 transactions carried out in the normal course of the business of the assessee. 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.

3.6. We find from pages 5-7 of the impugned penalty order u/s.271D of the Act that assessee has given complete explanation of the transactions before the ld. Addl. CIT by way of detailed explanation together with the purpose of passing a journal entry including relevant journal entry passed in the books of accounts of the assessee company. The same are not reiterated for the sake of brevity herein as they are already forming part of the records. 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 rigors 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 nonimposition 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.

3.7. 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 ₹ 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.

3.8. 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.

3.9. In view of our aforesaid observations and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the ld. CIT(A) had rightly held that no penalty u/s.271D of the Act could be levied in respect of



transactions with Jawala Real Estate Pvt. Ltd., Shreeniwas Cotton Mills Limited & Lodha Developers Private Limited totaling to ₹ 66,01,707/- in the facts and circumstances of the instant case. Accordingly, the grounds raised by the Revenue are dismissed.”

014. We find that impugned order before us are on same points and squarely covers the issue in favour of the assessee. The learned Departmental Representative could not show us any reason to deviate from it. As the issue is covered by the decision of the co-ordinate Benches, respectfully following the same, we hold that there is no infirmity in the order of the learned CIT(A) in deleting the penalty levied u/s 271 D of the Act for both the years. Therefore, the orders of Id CIT (A) are confirmed.
015. Accordingly, all the three grounds of appeal raised by the learned Assessing Officer are dismissed.
016. The facts for Assessment Year 2014-15 are also identical. Both the parties also confirmed that there is no change in the facts and circumstances of the case, except the amount of penalty.
017. On careful hearing of the above appeal, for the reason given in above appeal of the learned Assessing Officer for Assessment Year 2013-14, we confirm order of Id CIT (A) in deleting penalty u/s 271 D of the Act . Accordingly, appeal of the Id AO for AY 2014-15 is also allowed.
018. Accordingly, both the appeals filed by the learned Assessing Officer for both the Assessment Years are dismissed.

Order pronounced in the open court on 24.03.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Mumbai, Dated: 24.03.2022

Sudip Sarkar, Sr.PS



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/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai