

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOS. 3047 & 3113/MUM/2019  
(A.Y: 2013-14 & 2014-15)**

ACIT – Central Circle – 7(3) Room No. 655, 6 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Macrotech Developers Ltd., (Earlier known as M/s. Lodha Developers Ltd.,) 412, Vardhan Chambers Cawasji Patel Street, Fort Mumbai - 400001  <b>PAN: AAACL1490J</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Niraj Sheth</b>
<b>Department by</b>	<b>:</b>	<b>Shri P.C. Chhotaray</b>
<b>Date of Hearing</b>	<b>:</b>	<b>16.03.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>06.04.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 20.02.2019 and 12.02.2019 for the A.Ys. 2013-14 and 2014-15 respectively.

**2.** Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 3047/MUM/2019 for Assessment Year 2013-14 as a lead case.

**3.** Brief facts of the case are, assessee is engaged in the business of land development and construction of real estate properties. The assessment u/s. 143(3) completed on 30.12.2016. The present penalty order u/s. 271D was passed by ACIT – Central Range-7 on reference by DCIT – Central Circle–7(3) (Assessing Officer) through letter dated 04.04.2017 intimating that assessee has accepted loans/deposits from various parties in violation of 269SS of Income-tax Act, 1961 (in short “Act”). The show cause notice was issued to the assessee and the Ld. AR of the assessee attended and filed the relevant information as called for. The assessee has filed written submissions before ACIT – 7 and the same is reproduced below: -

*"a) In the case of A. B. Shanti 255 ITR 258 the Supreme Court while deciding the constitutional validity of Sec. 269SS/269T held that the objects of these sections are to defeat the introduction of unaccounted money by making false entries or false explanations, both during the course of search and seizure and otherwise. The court had also held that before levying penalty under these provisions, the assessee can plead presence of reasonable cause and penalty levying authority has to give a finding that there is no reasonable cause.*

b. *The CBDT circular no.387 dated 06.07.1984 explaining the purpose and scope of these provisions have also clarified that the object was to defeat explanation of unaccounted cash or unaccounted money.*

c. *There is no decision of High Courts or Supreme Court, which held that financial transactions carried out during the conduct of business within the group concerns or with business associates through journal entries shall attract the provisions of Sec. 269SS/269T. Even the old decision of Delhi High Court in the case of Noida Toll Bridge (262 ITR 260) it was held that the provisions shall not be attracted to business transactions through journal entries and the said decision has been accepted by the department and no SLP was filed.*

d) *The Bombay high court decision in the case of Triumph International is the only decision that created a somewhat ambivalent situation where it was held that acceptance or repayment of loans / deposits by a mode otherwise than account payee cheque / bank draft, prima facie attract the provision of Sec. 26955/T subject to reasonable cause as defined u/s.273B (para 22 of the decision). The court, however, has clearly laid down in paras 23 & 24 of the said decision as to what would constitute a reasonable cause u/s.273B. In respect of Sec.271D/271E, the court' has clearly laid down in para 24 of the said order the following texts:*

*"The genuineness of receipt of the loan deposit and the transactions of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has to be doubted in the regular assessment."*

*In other words if there is nothing on record to suggest, to such doubt, penalties cannot be levied.*

*The records must also speak that the money involved represented unaccounted money. The Court held that in the absence of these findings the penalty levying authority has to come to the conclusion that there is reasonable cause u/s.273B, In this context, we refer to Para 10 of the assessment order whereby the AO had referred the matter to your honour for levy of penalty. This is reproduced below:*

*"In respect of certain loan transaction It Is noticed that those are taken/settled otherwise than account payee cheque, regarding with the assessee had filed explanation in the assessment proceedings. The same is considered but not accepted. Thus, by not accepting the loans through account payee cheque or bank draft and also the repayment the same*

*other than through banking mode, the assessee in fact has violated the provision of section 26955/269T which prohibits such transactions', The proviso to section 269SS exempts certain categories mentioned as (a) to (e) where loan or deposit taken can be accepted other than by account payee cheque or draft but the assessee does not fall under any of the exempt category. Hence, by not accepting the loan / deposit or the repayment of the same by account payee cheque or bank draft the assessee has violated the provisions of section 269SS/269T of the I.T. Act. Therefore the matter is being separately referred to Add. CIT, CR-7, Mumbai for necessary action regarding Initiation of penalty proceedings u/s.271D/271E of the I.T. Act."*

*e) As may kindly be seen, there is no finding by the AO that the genuineness of the transaction have been doubted or that the assessee has tried to explain unaccounted money or has introduced unaccounted money. As held by the Jurisdictional High Court, in the absence of these findings in the assessment order, the penalty levying authority should presume that there is presence of reasonable cause u/s.273B.*

*f) A much later decision of the Delhi High Court in the case of Worldwide Township 345 ITR 270 (Del.) held that transfer of receivables and payables by journal entries during the course of normal business shall not fall in the ambit of Sec.269SS/T, since such transfers do not involve money or currency. The said decision of Delhi High Court has been accepted by the CBDT and no SLP has been filed. This is evident from the circular no.10 of 2016 issued by the CBDT."*

**4.** Further, ACIT observed that assessee has categorized the transaction with its sister concerns to show that these are genuine business transactions and penalty u/s. 271D is not applicable/leviable u/s.273B of the Act. Further assessee filed an explanation in this regard which is reproduced below: -

*"We have been following the system of a single account of an associate/sister concern. All the transactions are recorded in that single account. Therefore, transactions recorded under said account*

*are not necessarily loan transactions. It is rather a current account where all the entries relating to allocation of group expenses, payment of taxes and payment to vendors and service providers etc are made by one entity in Toto and debited / credited to group entities as per their respective share and corresponding entries are also passed by those other entities. These transactions should not be considered in the nature of loan transactions (even in the light of the Triumph International decision) and no penalty should be levied u/s 271D/E of the income tax Act, 1961.*

*2.3 The analysis of Ledger of above mentioned sister concerns are enclosed herewith as Annexure '2'*

*The explanation for each of the categories mentioned in Annexure '2' is as follows:*

- 1. Opening Balance: This is the opening balance and does not represent transaction during the year and hence not covered u/s 269SS.*
- 2. Loan Given / Received Back: Not covered u/s 269SS.*
- 3. Loan repayment/Loan taken in cheque: Not covered u/s 269SS.*

*Interest: This represents annual interest amount calculated on financial transactions and the settlement of the same is made in the next financial year. However based on accrual basis of accounting, entry for the same is to be passed in the current year. Hence Journal entry has to be passed for Interest transactions. Considering the nature of transaction, the journal entry for interest is not a loan and hence shall not be considered as violating provisions of Section 269SS / T.*

*5. On behalf payments (taxes, expenses): Sometimes the assessee company owing to lack of availability of fund in its bank accounts requests its associate / group companies to pay tax on its behalf. If the associate companies were to give cheque loans to assessee company and then if the assessee company would have to make payment of tax, it would involve a time gap of 2 to 3 days and tax payment could not be done within the due dates. To avoid this delay and ensure that tax payment is done on time, payment is directly made by associate company on behalf of the assessee company and journal entry is passed by the assessee company for giving effect to this transaction. These transactions of reimbursements are accounted for by way of journal entries. Considering, the nature of transaction not being loan, the journal*

entry should not be considered as violating provisions of section 269SS / T. Such transactions have been excluded in the Triumph International decision as well holding that actual payment will only be an empty formality.

6. *Same 'day contra:* There are transaction of debit as well as credit on the same day which does not result in loan taken / repayment during the day, hence the same is reduce from the total transactions.

7. *Sale/ 'Purchase transactions:* The assessee also carries on the activity of purchase and sale of building materials from/to its associates companies. These transactions are on account of purchase and sale of materials and not loan transactions. Considering the nature of transaction, the journal entry for purchases / sales of building materials is not a loan land hence shall not be considered as violating provisions of Section 269SS / T." ; i

6. *After excluding the above categories of transactions, the balance credit entries in the ledgers are as follows:*

Sr. No.	Name of the Sister Concerns	Credits (Rs.)
1	Lodha Crown Buildmart Private Limited	1,03,85,936
	TOTAL	1,03,85,936

*For these balance transactions, the assessee has given the following explanation:*

"a) *On observation of the above facts, it can be seen that there are various journal entries in the ledgers which do not fall in any of the above categories mentioned. The explanation for these Journal entries passed are as follows:*

**Transactions with Bennett Coleman & Co.Ltd.,**

Bennett Coleman & Co Ltd ..... Dr                      Rs. 1,03,85,936  
To Lodha Crown Buildmart Private Limited                      Rs. 1,03,85,936

*Bennett Coleman & Co.Ltd (BCCL) is a vendor through which advertisements are provided in the news papers. The Assessee had amount payable to BCCL on account of advertisements given through them. BCCL has booked flats in project being developed by Lodha Crown Buildmart Private Limited (LCBPL), a sister concern of the assessee.*

*The amount payable to BCCL by the assessee was adjusted against the amount receivable from flat booking in LCBPL. This adjustment was given effect by way of the above mentioned journal entry.*

*b) The assessee submits that it has undertaken the above transaction with a view to extinguish the mutual liability of paying / receiving the amounts by the assessee and its sister concern to third parties. In view of the above facts the assessee submits that its action of extinguishing the mutual liability of paying / receiving through journal entries constitute reasonable cause; hence, penalty proceeding initiated u/s 271D/271E should be dropped."*

**5.** After considering the detailed submissions Ld. ACIT rejected the submissions made by the assessee and he levied the penalty u/s. 271D of the Act.

**6.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) after considering the submissions of the assessee deleted the penalty levied by the Assessing Officer. Aggrieved revenue is in appeal before us rising following grounds in its appeal: -

*"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 Rs.1,03,85,936/- u/s 271D holding that there was reasonable cause u/s 273B for entering on transaction to transaction basis in the given case for the existence of reasonable cause u/s 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) Lid. in ITA.No. Nos.171/172/202/2013/2 18/219 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 precedents otiose?"*

**7.** At the time of hearing, Senior standing counsel Shri P.C. Chhotary submitted detailed submissions in the form of written submissions and in the written submissions Ld. Counsel submitted various issues involving 271D of the Act relating to previous appeals and decisions of the ITAT. He discussed elaborately and expressed his critical views on the previous orders and there is no specific facts relating to the present appeal. Therefore, in our considered view these views and comments are irrelevant for the present disposal of the appeal under consideration. He made following submissions and prayed that this issue may be critically dealt with by the ITAT, and submitted as under: -

*"18. On the basis of the above submission, the following issues are crystallized which may be categorically dealt with by the Hon'ble ITAT:*

*(i) To examine the imposition of penalty under section 271D and 271E of the Act in the light of the judgment of the Hon'ble Bombay High Court dated 12.6.2012 in the case of Triumph International Finance (India) Ltd. (supra). The matter should be examined on the first principles considering the provisions of law and the judgment of the Bombay High Court dated 12.6.2012 in the case of Triumph International Finance (India) Ltd. (supra) without being influenced by various judgments of the ITAT.*

*(ii) To give a categorical finding whether the assessee, by undertaking transactions through journal entries, are violating the provisions of sections 269SS and 269T and are liable to penalty under section 271D and 271E in view of the judgment of the Hon'ble*

*Bombay High Court dated 12.6.2012 in the case of Triumph International Finance (India) Ltd. (supra).*

*(iii) To give a categorical finding whether the only way to escape penalty is for the assessee to prove reasonable cause under section 273B of the Act for the default.*

*(iv) To give a categorical finding whether the burden of proving existence of reasonable cause for the default is solely on the assessee as per the provisions of section 273B of the Act.*

*(v) To give a categorical finding whether the assessee should prove reasonable cause in respect of each transaction undertaken in contravention of the provisions of section 269SS and 269T.*

*(vi) To categorically state whether the assessee should give specific reasons for not complying with the provisions of section 269SS and 269T in respect of each transaction instead of giving vague and general explanation.*

*(vii) To give a categorical finding whether the genuineness of the transactions is not a factor to decide the levy of penalty. The transaction may be genuine, yet if the reasonable cause for the default is not proved, the assessee will be liable to penalty. To give comments on the judgment of the Supreme Court in the case of Assistant Director of Inspection v. Kum. A.B. Shanthi (supra) and the judgment of the Special Bench in the case of Deepak Sales and Properties (P) Ltd. (Supra).*

*(viii) To give a categorical finding if the Assessing Officer is required to give a finding on the genuineness of all the impugned transactions before considering the applicability of the provisions of section 269SS and 269T of the Act. It may be kept in mind that it is impossible for the Assessing Officer to give such a finding in the case of hundreds of transactions.*

*(ix) To categorically explain what is meant by the words often used by the Hon'ble ITAT "the genuineness of the transactions has not been doubted by the Assessing Officer." To categorically state whether such observations are uncalled for, since the Assessing Officer is, at the first place, not required, to examine the genuineness of the transactions and that is not his mandate.*

*(x) To give a categorical finding whether the default is absolute and the assessee is liable to penalty the moment the transaction is done in violation of the provisions of sections 269SS and 269T and the burden is on the assessee to establish reasonable cause for the*

*failure. If the assessee fails to discharge this burden, it is liable to penalty.*

*(xi) The provision of section 273B casts the full burden on the assessee to prove reasonable cause for the default. Then to explain categorically how the burden shifts to Assessing Officer to disprove that the assessee had reasonable cause. In view of the plain and unambiguous language of section 273 B of the Act, to explain categorically what burdens are to be discharged by the assessee and the Assessing Officer.*

*(xii) The judgment of the Hon'ble Bombay High Court dated 12.06.2012 (supra) is categorical that transaction through journal entries constitute contravention of the provisions of sections 269SS and 269T. Then to enquire and find out how not a single penalty has been sustained in the Lodha group of cases all these years after 12.06.2012. Is it not surprising that the ITAT did not find a single case fit for penalty in hundreds of cases of the Lodha group decided after 12.06.2012 so far, even in respect of transactions undertaken after 12.6.2012? To examine whether there is a fundamental flaw in the approach of the Hon'ble ITAT.*

*(xiii) To find out how the various different interpretations by the Hon'ble ITAT have rendered the judgment of the Bombay High Court dated 12.6.2012 (supra) a dead letter.*

*(xiv) To address a larger issue how a subordinate institution as ITAT by erroneous interpretation of the provisions, can render the judgment of the High Court ineffective and inoperative.*

*(xv) To examine a much larger issue whether the assessee group can be permitted to continue with journal entries in open defiance of the judgment of the jurisdictional High Court dated 12.6.2012 in the case of Triumph International Finance (India) Ltd. (supra).*

*(xvi) To examine how the assessees of the Lodha group will fall in line and obey the judgment of the Hon'ble Bombay High Court dated 12.06.2012 (supra)*

*(xvii) To give clear operational guidelines as to how to save and implement the judgment dated 12.6.2012 of the Bombay High Court in the case of Triumph International Finance India Ltd.(supra).*

*19. It is respectfully submitted the Hon'ble ITAT may critically examine the above issues and give appropriate guidelines on all the issues. Thereafter, the matter may be set aside to the Assessing Officer to pass fresh orders in the line of the guidelines issued by the*

*Hon'ble ITAT. The assessee may be directed to prove reasonable cause in respect of each such transaction, The general explanation like administrative efficiencies, assignment of receivables, squaring of transactions, consolidation of accounts are not legally acceptable explanations. In spite of the perceptions of the assessee, law demands that the transactions should be undertaken through account payee cheques etc, The assessee has no option. The limited issue is that the assessee should have to explain why it did not undertake the transaction through account payee cheque etc. The Assessing Officer may be directed to separately examine the justification given in respect of each default and impose penalty in respect of those transactions where the assessee has not been able to prove reasonable cause. With all the facts available on record, the imposition of penalty would be appropriately scrutinized by the appellate authorities.*

*20. Therefore, it is prayed that the appeals may be set aside to the file of the Assessing Officer to pass the penalty orders de novo in the above lines."*

**8.** In this regard Ld.DR relied on the following case laws: -

- a) *Assistant Director of Inspection V. Kum. A.B. Shanti [122 taxman 574 (SC)]*
- b) *Deepak Sales & Properties (P.) Ltd., V. Addl. CIT [95 taxmann.com 166 (Mumbai Tribunal ) (SB)]*
- c) *DCIT v. M/s. Macrotech Developers Ltd., in ITA.No. 30358, 3046/Mum/2019 and ITA.No. 3049 & 4054/Mum/2019 dated 25.11.2021*
- d) *DCIT v. M/s. Sanathnagar Enterprises Limited and others, in ITA.No. 3143 & 3144/Mum/2017 dated 17.12.2021*

**9.** On the other hand, Ld. AR submitted as below: -

*"1. The finding of the learned CIT(A) that the transactions in question do not constitute loans or advances has become final*

*The present penalties have been levied by the Additional CIT under section 271D of the Act on the alleged ground that the Respondents have violated provisions of section 26955 of the Act.*

*The CIT(A) has examined the nature of transactions and has found that the transactions are journal entries passed in the ordinary course of business and are in the nature of assigning of receivables*

*or extinguishment of mutual liability of paying/ receiving the amounts by the Respondent and its sister concerns and is not a transaction of receiving/ paying loans. [Kindly refer to para 6.5 of the CIT(A)'s order dated 20/02/2019 in ITA No. 3047/Mum/2019 and para 5.5 of the CIT(A)'s order dated 12/02/2019 in ITA No. 3113/Mum/2019]. A reference to the grounds raised in both the appeals shows that this finding has not been challenged by the Department. Moreover, the learned Standing Counsel of the Department did not raise any such challenge even in the course of the hearing although detailed arguments were made by him on several other aspects and a detailed submission was also filed by him. Therefore, on this narrow ground, the appeals deserve to be dismissed.*

## *2. Reasonable Cause*

*Without prejudice, even if it is assumed that transactions are in the nature of loans or advances, it is respectfully submitted that no penalty under section 271D can be levied as the Respondent had a reasonable cause within the meaning of section 273B of the Act. It is submitted that the Hon'ble ITAT has consistently held in cases of group concerns that passing of journal entries in the ordinary course of business constitutes a reasonable cause and, on that ground, has been pleased to confirm deletion of the penalties. Reliance is placed on the following decisions:*

*a) Macrotech Developers Limited (Successor to Macrotech Construction Pvt Ltd) (ITA No. 1415/Mum/2019 & 1416/ Mum/ 2018) dated 8th April 2021 (Page 11-70 of the case law compilation)*

*b) Palava Dwellers Pvt Ltd. (ITA No. 3050 & 3051/ Mum/ 2019) dated 11th October 2021 (Page 71-84 of the case law compilation)*

*c) Bellissimo Crown Pvt Ltd. and others (ITA No. 3038 & 3046/ Mum/ 2019 and others) dated 25th November, 2021 (Page 85-108 of the case law compilation)*

*d) M/s Sanathnagar Enterprise Limited & Others [ITA No 3143/ Mum/ 2017 and ITA No 3144/Mum/ 2017 & Others] (Pages 109-191 of the case law compilation)*

*Reliance is also placed on the decisions of the Hon'ble Supreme Court and the Hon'ble Bombay High Court in the case of our group concerns, which have been placed in the compilation wherein a view is consistently held that no penalty is leviable on account of there being a reasonable cause.*

3. Written submissions filed by the learned standing counsel for the Department

*It is submitted that the contentions raised by the learned standing counsel for the Department in his written submissions dated 15<sup>th</sup> March, 2022 are similar to those raised in earlier appeals. The same have been comprehensively addressed by the Hon'ble ITAT in its recent order dated 17th December, 2021 in case of Ms Sanathnagar Enterprise Limited & Others [ITA No 3143/Mum/ 2017 and ITA No 3144/ Mum/2017 & Others] (Pages 109-191 of the case law compilation). The Respondent relies on the said decision of the Hon'ble Tribunal. The learned Standing Counsel did not dispute that the all the arguments raised by him have been considered by the Hon'ble ITAT but contended that the said decision should not be followed for various alleged reasons.*

*It is respectfully submitted that submissions made by the learned standing counsel that the binding precedent ought not to be followed are untenable in view of the well-settled principle that the decisions of co-ordinate benches are binding on the subsequent benches and judicial discipline requires that they be followed. Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. JWC Logistics Park (P) Ltd. [2018] 100 taxmann.com 355 (Bom) - SLP dismissed [2018] 100 taxmann.com 356 (SC) - (Copy enclosed). The Respondent prays that the Hon'ble Bench may be pleased to kindly direct the Respondent to further elucidate the matter, if need be.*

*Prayer*

*In view of the above, it is respectfully prayed that the Hon'ble Tribunal be pleased to confirm the deletion of the penalty levied under section 271D by the CIT(A) for the assessment years 2013-14 and 2014-15 and dismiss the Department's appeals with costs."*

**10.** Considered the rival submissions and material placed on record, we observed that the issue under consideration is relating to penalty order u/s. 271D of the Act passed by ACIT-7, Mumbai. After considering the submissions of both the counsel, we observed that the Coordinate Bench

in assessee's group company i.e. Lodha Builder Pvt. Ltd., held on the issue of similar levy of penalty as under: -

*"32. From above extracts from the judgment of jurisdictional High Court, it is clear that the journal entries are hit by the relevant provisions of s. 269SS of the Act. However, it is the finding of the Hon'ble High Court that completing the "empty formalities" of payments and repayments by issuing/receiving cheque to swap/square, tip the transactions, is not the intention of the provisions of s. 269SS of the Act, when the transactions are otherwise bona fide or genuine. Such reasons, of the assessee constitute 'reasonable cause' within the meaning of s. 273B of the Act. In the light of the above ratio of judgment, we analyse the facts of the present case hereasunder.*

*33. We find that there is no finding of AO in the order of the AO during the assessment proceedings that impugned transactions constitute 'unaccounted money and are not bona fide or not genuine. As such, there is no information or material before the AO to suggest or demonstrate the same. In the language of the -Hon'ble High Court, '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'. Admittedly, the transactions by way of journal entries are aimed at the extinguishment of the mutual liabilities between the assessee and the sister concerns of the group and such reasons constitute a reasonable cause.*

*34. In the present case, the causes shown by the assessee for receiving Nor/repayment of the loan/deposit otherwise than by account-payee cheque/bank draft, was on account of the following, namely: alternate mode of raising funds; assignment of receivables; squaring up transactions; operational efficiencies/MIS purpose; consolidation of family member debts; correction of errors; and loans taken in case. In our opinion, all these reasons are, prima facie, commercial in nature and they cannot be described as non-business by any means. Further, we asked: ourselves as to why should the assessee under consideration take up issuing number of account payee cheques/bank drafts which can be accounted by the journal entries. This being the Spirit of Hon'ble High Court of Bombay, we adopt the same to the present issue. As such, the same is binding on us. What is the" point in issuing hundreds of account payee cheques/account payee bank drafts between the sister concerns of the group, when transactions can be accounted in books using journal entries, which is also an accepted mode of accounting in our*

*opinion, on the factual matrix of these cases under consideration, journal entries should enjoy equal immunity on par with account payee cheques or bank drafts. Of course, the above conclusion apply so long as the transactions are for business purposes and do not involve unaccounted money and they are genuine. In fact, such journal entries shall save large number of cheque books for the banks.*

*35. Further, there is no dispute that the impugned journal entries in the respective books were done with the view to raise funds from the sister concerns, to assign the receivable among the sister concerns, to adjust or transfer the balances, of consolidate the debts, to correct the clerical errors etc. In the language of the -Hon'ble High Court, the said journal entries' constitute one of the recognized modes of recording the loan/deposit. The commercial nature and occurrence of these transactions by way of journal entries is in the normal course of business operation of the group concerns. In this regard, there is no adverse finding by the AO in the regular assessment. AO has not made out in the -assessment that any of the impugned transactions is aimed at non commercial reasons and outside the normal business' operations? As such, the provisions of ss. 269SS and 269T of the Act shall not be attracted where there is no involvement of the 'money' as held by the Hon'ble High Court of Delhi in-the above cited cases, supra. Therefore, in the fact of the present case, in our opinion, though the assessee has violated the provisions of ss. 269SS/269T of the Act in respect of journal entries, the assessee has shown reasonable cause and, therefore, the penalty imposed under s. 271D/271E of the Act are not sustainable. Regarding an amount of 'money' said to have been paid in violation of the said provisions, the same needs to be deleted in view of our decision on the legal issue discussed in paras 16 to 22 of the this order. Accordingly, the grounds raised in this regard are allowed."*

**11.** Further, we observed that Ld. Senior counsel specifically submitted that the Hon'ble Bombay High Court decision in the case of CIT v. Triumph International (I) Finance Ltd., in ITA.No. 5745 /2010 dated 17.08.2012 should be considered while decide the issue under consideration. We observe from the record that Hon'ble Bombay High Court in the case of assessee's group case in ITA.No. 171/172/20/2013/218/219 of 2015 order

dated 06.02.2018 the Hon'ble Bombay High Court discussed the case of CIT v. Triumph International (I) Finance Ltd., (supra) decision in details and gave the relief in favour of the assessee group, relevant findings are given below: -

*"(d) We find that the impugned order of the Tribunal has on application of the test laid down for establishment of reasonable cause, for breach of Section 269SS of the Act by this Court in Triumph International Finance (supra) found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal while relying upon the order of this Court in Triumph International Finance (supra) has held that in the present facts, neither the genuineness of receipt of loans / deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. Further, the Tribunal records that as observed by this Court in Triumph International Finance (supra) that journal entries constituted a recognized modes of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes out side the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with Section 269SS of the Act.*

*(e) Mr. Mohanty's submission that the test laid down in Triumph International Finance (supra) will have no application in the present facts in view of the large number of entries in this case as compared to only one entry in the case before this Court. The test of reasonable cause cannot, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the Assessee for reasonable cause and this finding is not shown to be perverse."*

**12.** Respectfully following the above decisions and issue under consideration is already settled in favour of the assessee. Accordingly, we are inclined to dismiss the grounds of appeal raised by the revenue.

**13.** Coming to the appeal relating to A.Y. 2013-14, since facts in this case are mutatis mutandis, therefore the decision taken in A.Y. 2012-13 is applicable to this assessment year also. Accordingly, this appeal is dismissed.

**14.** In the result, appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 06.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 06.04.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**