

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI SIDDHARATHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1184/AHD/2019  
निर्धारण वर्ष/Asstt. Year: 2015-2016

M/s. Baroda Greases & Autocare Products Pvt. Ltd., 4, Samipya Flat, Opp. Verai Mataji Temple, Urmi-Dinesh Mill Road, Akota, Gujarat.  <b>PAN: AAACB8655K</b>	Vs.	Addl. CIT., Range-1(1), Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	None
Revenue by :	Shri R.R. Makwana, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **02/05/2022**  
घोषणा की तारीख/**Date of Pronouncement**: **11/05/2022**

**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)-1, Vadodara dated 29/05/2019 arising in the matter of assessment 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 assessee has following grounds of appeal:

A. *Ld.Addl.CIT and Ld.CIT Appeal has erred in levying penalty and that too at the maximum rate u/s.271D in respect of cash deposit aggregating to Rs.3,22,000/- from its directors in violation of section 269SS.*

B. *Ld.Addl.CIT and Ld.CIT Appeal ought to have accepted reliance placed on the judgement of Hon'ble Hyderabad Tribunal in the case of M/s.Dillu Cine Enterprises (P.) Ltd., Delhi High Court in case of M/s.samora Hotels as well as Madras High court in the case of M/s Idhyam Publication, as a reasonable cause u/s.273B and therefore ought to have levied penalty u/s.271D.*

C. *Ld.Addl.CIT and Ld.CIT Appeal ought to have followed the judgement of the Hon'ble Hyderabad Tribunal in case of M/s.Dillu Cine enterprises (P) Ltd. [2002] 80ITD 484 (HYD.) squarely applying on facts, where the same judgement has been accepted by the department.*

D. *Ld.Addl. CIT and Ld. CIT Appeal ought to have appreciated exigencies of receiving cash for meeting urgent requirement of labour and tax payment.*

E. *Appellant therefore pleads the penalty levied be deleted.*

*Appellant craves leave to add, alter, amend or rescind any of the above Grounds of Appeal.*

3. The only effective issue raised by the assessee is that the learned CIT-A erred in confirming the penalty under section 271D of the Act on account of cash deposit/ loan of Rs. 3,22,000/- taken from directors.

4. The assessee is a private limited company engaged in the business of manufacturing of Grease. The assessee has received cash loan of Rs. 3.22 Lakhs from its director namely Shri Harnish Jayantilal Shah and Shri Vinalkat Jayabtilal Shah in violation of section 269SS of the Act. Thus, the AO initiated penalty proceedings under section 271D of the Act.

4.1 However, the assessee submitted that amount of loan taken from the director/shareholder will not come under the purview of the provision of section 269SS of the Act, as the director/shareholder are not 'any other person' as referred

in section 269SS of the Act. Accordingly, the question of levying penalty under section 271D does not arise. The assessee is support relied on the judgment of Hon'ble Hyderabad Tribunal in case of in case of M/s Dhilu Cine Enterprise (P) Ltd reported in [2002] 80 ITD 484 (HYD).

4.2 However the AO held the decision of Hyderabad Tribunal is not acceptable in the light of decision of Hon'ble Delhi High Court in case of CIT vs. Samora Hotels (P.) Ltd. reported in [2012] 19 taxmann.com 285 (Delhi) where it was held that the expression 'any other person' does not exclude director/shareholder. Accordingly the AO levied the penalty for Rs. 3.22 Lakh under the provision of section 271D of the Act which was subsequently confirmed by the learned CIT-A by observing as under:

*7.1. The only argument of the AR is that the appellant had bonafide belief based on the judgement cited above that Directors are outside the purview of "any other person". Admittedly, the AR has failed to show any urgency in acceptance of loan in cash. Sec 269SS prohibits "a person" from taking or accepting from "any other person" any "loan or deposit" otherwise than by account payee cheque, inter alia, the amount of such loan and deposit Is 20,000 or more. There is no dispute that expression "any other person" would not refer to a director or shareholder of the company. Such a view is not warranted from plain reading of section. There is no indication that the corporate veil is to be pierced so as to bring about an identity between the company as a juristic person and its directors and members. Therefore, the expression "any other person" does not exclude the director or members of the appellant company which has received the loan. When the AR was asked to furnish the answer in penalty proceedings, the appellant did not take the plea that the said receipts were loan but because they were from director share holder, the loans were not covered u/s 269SS. The AR could not offer any plausible reason for accepting loan in cash.*

*7.2. Books of account of the company is audited since years. Directors himself is supposed to give a certificate to the Audit Firm stating that no cash transaction exceeding Rs.20,000/- was made with any person during the year. It means the Director is well aware of the provisions of Sec. 269SS. Even otherwise, is judicially held that ignorance is not an excuse. Clearly, the appellant has never made a belief what to speak of "bonafide belief that loan taken from Director/shareholder were not within the ambit of Section 269SS.*

*7.3. It has been endeavour of the Government to curb black money, Emphasis is always on to move to digital era for any financial transaction and minimise cash transaction in all walks of life. The Director is a well qualified person to understand*

*the nuances of the provisions of the Act, All the activities of the company is controlled and managed by the Director. I do not find any compelling reason why he could not issue cheque to the appellant company in lieu of cash. Thus, hiding behind Section 273B is inappropriate for the reason that acceptance of loan is cash was neither bonafide nor out of ignorance of the provisions of the Act. Exigencies of payment are also not proved. Unless that is established, the shelter of Section 273B is not available. Accordingly, I decline to interfere with the penalty order. The appellant fails on the sole ground and four sub grounds.*

5. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

6. When the matter was called for hearing it was noticed that there was none appeared on behalf of the assessee despite the fact that case has been listed for hearing. On the previous occasion the notice intimating the date of hearing was sent to the address of the assessee but the same has returned back with the remark "left". However, we find no communication from the assessee about the change of address. It is the trite law that assessee after filing the appeal should be vigilant enough to prosecute the same. But, we find that the assessee is not serious in pursuing the appeal filed by it. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. Accordingly, we decided to proceed to adjudicate the appeal after hearing the learned DR appearing on behalf of the Revenue.

7. We have heard the Id. DR appearing on behalf of the revenue and perused the materials available on record. In the case of *Asstt. Director of Inspection v. Kumari A.B. Shanthi* [2002] 255 ITR 258 (SC), Hon'ble Supreme Court has held that "The undue hardship of the provisions of Section 271D, which replaced Section 276DD constituting the failure to comply with the provisions of Section 269SS into an offence, is substantially mitigated by the inclusion of Section 273B providing that if there was a genuine and *bona fide* transaction and if for any reason the taxpayer could not get a loan or deposit by account payee

cheque or demand draft for some *bona fide* reasons, the authority vested with the power to impose penalty as a discretionary power not to levy the penalty.

7.1 When Section 271D is read with Section 273B, which begins with the non obstante clause 'Notwithstanding anything contained in the provisions of *inter alia* Section 271D', it is clear that in spite of the provisions of Section 271D, the enactment following, namely, 'no penalty shall be imposed on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure', will have its full operation. Under Section 273B a judicial discretion is left with the assessing authority not to levy a penalty under Section 271D if the authority is satisfied that there was a reasonable cause for not complying with the provisions of Section 269SS.

7.2 A CBDT Circular No. 387, dated 6-7-1984 also says, "it was not intention of the legislature to penalize genuine flow of funds for meeting urgent business necessities. A conjoint reading of the above discussion reveals that the penalty under the provisions of section 271D of the Act is not automatic. The assessee during the assessment proceedings vide letter dated 11 April 2018, placed on page 10 of the paper book, has submitted that it has accepted money in cash to meet the urgent requirement for the payment of wages, salaries, and payment of VAT as there was a lot of pressure from the employees and from the VAT department. This plea of the assessee has never been doubted by the authorities below. Accordingly we hold that, there was genuine business need for the assessee which compelled it to take the loan in cash from the directors. In such facts and circumstances, we are of the view that the penalty under the provisions of section 271D of the Act is not warranted, particularly, in a situation where the source of receipt of cash was not in doubt. Hence, we are not inclined to uphold the findings of the authorities below. Thus we set aside the finding of the learned CIT-A and direct the AO to delete the penalty levied by him under the provisions of section 271D of the Act. Thus, the ground of appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 11/05/2022 at Ahmedabad.**

**Sd/-  
(SIDDHARATHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
11/05/2022  
*Manish*