

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. RAVISH SOOD, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No. 237 & 238/(Asr)/2016
Assessment Year: 2009-10**

Sh. Balbir Singh Goraya
House No. 1043,
Village Chah Bohrawalla
Batala

Vs.

J.C.I.T.
Range-II
Amritsar

[PAN: AMUPG1406C]

(Appellant)

(Respondent)

Appellant by : Sh. Tarun Bansal, Advocate

Respondent by: S/sh. Rahul Dhawan, CIT-DR & Rohit Mehra, D.R

Date of Hearing: 21.12.2021

Date of Pronouncement: 21.02.2022

ORDER

PER RAVISH SOOD, JM :

The present appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals)-1, Amritsar, dated 19.02.2016, which in turn arises from the respective orders passed by the Joint CIT, Range-II, Amritsar U/ss. 271D and 271E of the Income-Tax Act, 1961 ("Act", for short), dated

14.11.2013. As the issues involved in the captioned appeals are inextricably interlinked, or in fact interwoven, therefore, the same are being taken up and disposed off by way of a common order. We shall first take up the appeal filed by the assessee against the order of the CIT(A) wherein the penalty imposed by the JCIT, Range-II, Amritsar u/s 271D of the Act has been upheld by him. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. That Id CIT(A) has erred in law while confirming the penalty u/s 271D, by ignoring merits of Remand Report filed by A.O U/R 46A dated 28.09.15, hence penalty is liable to be deleted.
2. That Id CIT(A) & JCIT has erred in law while imposing penalty u/s 271D, as section 273B of the Income-tax Act, 1961 envisages a non-obstante clause against section 271D and facts are on record, hence penalty is liable to be deleted.
3. That the Id JCIT has erred in law, while imposing the penalty u/s 271D on the basis of remand report, ignoring that the reasonable cause is already mentioned in Remand Report, of A.O to CIT(A) in quantum appeal and CIT(A) considered the same in quantum appeal, hence penalty is bad in law.
4. That Id. CIT(A) & JCIT in penalty order, wrongly ignored that the transaction of the assessee was in a family, genuine bonafide, not a transaction, not aimed at avoiding any tax liability but if resulted in the infraction of any law, in as much as, the default is technical & venial in nature and finally the transactions are appearing in the books of Accounts of appellant & Loaner as hold by CIT(A) at Page-11, in his quantum order, hence penalty in liable to be deleted.
5. That order of Ld AO & Ld CIT (A) is bad in law, as well as, on facts.

6. That appellant craves to add or amend any ground of appeal before the appeal is finally heard or disposed-off.
 7. That the order may kindly be modified or another consequential relief be allowed.”
2. Succinctly stated, the assessee had filed his return of income for AY 2009-10 on 29.06.2009, declaring an income of Rs.1,53,000/- a/w agriculture income of Rs.3.80 lacs. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act. Assessment was thereafter framed by the AO vide his order passed u/s 144 of the Act, dated 19.09.2011, determining the income of the assessee at Rs.2,21,28,960/-.
3. Aggrieved, the assessee assailed the assessment before the CIT(Appeals), Amritsar. During the course of the appellate proceedings the CIT(A), vide his letter No. CIT(A)/Asr/2012-13/1607, dated 04.03.2013 called for a 'remand report' from the AO. As per the facts that transpired in the course of the remand proceedings, it was observed by the AO that the assessee had during the year under consideration received cash loan of Rs.1,36,50,000/- in two tranches from one Sh. Navtej Singh, viz. (i). Rs. 29 lac (on 19.09.2008); and Rs. 1,07,50,000/- (on 26.10.2008). Observing, that the assessee had raised the aforesaid loans in contravention of the

modes contemplated in section 269SS of the Act., the AO vide his letter dated, 13.08.2013 shared the said information with the Joint CIT, Range-II, Amritsar, as under:

- “1. Rs.29,00,000/- received in cash from Navtej Singh and deposited in Indian Overseas Bank, Batala A/c No.191201000000234; and
2. Rs.1,07,50,000/- received in cash from Navtej Singh and deposited in Indian Overseas Bank, Batala A/c No.191201000000234.”

4. Backed by the aforesaid information the JCIT, Range-II, Amritsar, taking cognizance of the fact that the assessee had raised the aforesaid loan of Rs.1,36,50,000/- in cash, i.e., in contravention of the provisions of section 269SS of the Act, thus, vide his notice u/s 271D, dated 17.10.2013 called upon him to explain as to why penalty under the said statutory provision may not be imposed on him. As the assessee failed to comply with the aforesaid notice, therefore, another opportunity was afforded to him. In reply, the assessee's counsel this time filed a letter seeking adjournment, which read as under:

“With reference to your penalty notice dated 1.11.13, I may submit as under:

1. The brief facts are that the Ld. A.O. made huge addition in the case of Balbir Singh Goraya for A.Y. 2009-10 and the appeal of the same is pending with CIT(A), Amritsar.

2. During the course of appeal proceedings the CIT(A) called the remand report from the AO, Batala.
3. In the remand report dated 8.5.13 the Ld. AO Batala initiated penalty proceedings u/s 271D and 271E and the same is fixed up before Jt. CIT, Range-II, Amritsar for 12.11.13.
4. The appeal of the appellant is fixed for 20.11.13 before CIT(A) and the assessee's application u/s 154 is also pending before AO, Batala.
5. This application u/s 154 has a direct bearing with the appeal before CIT(A).
6. Therefore, it is prayed that the penalty proceedings u/s 271D and 271E may kindly be adjourned till the disposal of appeal by CIT(A).
7. Power of Attorney is enclosed."

However, the JCIT was not persuaded to accept the aforesaid request of the assessee. Observing, that the penalty proceedings u/s 271D were independent of the appellate proceedings qua the quantum assessment, and also that the application filed by the assessee u/s 154 before the A.O (in quantum assessment) would have no bearing on the penalty proceedings u/s 271D of the Act, the JCIT declined the aforesaid request for an adjournment that was raised by the assessee's counsel. Further, Observing that the assessee had not denied the fact of having accepted cash loan aggregating to an amount of Rs.1,36,50,000/- (Rs.29,00,000/- + Rs.1,07,50,000/-), it was noticed by the JCIT that the assessee had chosen to remain silent on having received the aforesaid amount in contravention of the mandate of law. It was further observed by the JCIT that the AO in

his 'remand report' [filed in the course of the quantum appeal proceedings before the CIT(A)], had observed, that Sh. Navtej Singh, i.e., the lender, who was running a dairy business at Village: Manawala a/w the business of purchase/sale of properties was an Income-Tax assessee holding PAN No. CINESS919R. Also, it was noticed by the JCIT that Sh. Navtej Singh (supra) had admitted of having given a cash loan of Rs.29,00,000/- and Rs.1,07,50,000/- to the assessee. Observing, that both the assessee and the lender, viz. Sh. Navtej Singh were Income-Tax assessee's, the JCIT was of the view that the provisions of section 269SS of the Act were clearly applicable. Also, it was observed by the JCIT, that the AO, i.e., ITO, Ward-2(3), Batala in his 'remand report' had stated that the assessee in the course of his examination had accepted of having received cash loan of Rs.1,36,50,000/- from Sh. Navtej Singh (supra). Backed by the aforesaid facts, the JCIT holding a conviction that the fact that the assessee had contravened the provisions of section 269SS stood clearly established, thus, imposed a penalty of Rs.1,36,50,000/-, i.e., 100% of the amount of the cash loan that was received by the assessee u/s 271D of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A) it was inter alia, submitted by the assessee's counsel that the JCIT, Range-II, Amritsar, had imposed the penalty without affording sufficient opportunity of being heard to the assessee. Rebutting the aforesaid claim, it was observed by the CIT(A) that as the penalty proceedings in question were to be completed within a time period of six months as per section 275 of the Act, therefore, no infirmity could be related to the passing of the aforesaid order u/s 271D of the Act by the JCIT. Observing that the assessee had failed to establish any 'business exigency' which had prompted him to raise the loan in cash, i.e, in contravention of the express provisions of Sec. 269SS of the Act, the CIT(A) after drawing support from certain judicial pronouncements of the Hon'ble High Court of jurisdiction declined the assessee's claim of there being a reasonable cause for having received the loans in cash. Backed by his aforesaid observations, the CIT(A) relying upon the order of the ITAT, Amritsar in the case of M/s Charan Dass Ashok Kumar v. Addl. CIT, Moga, ITA No. 369/Asr/2011 upheld the penalty imposed by the AO u/s 271D of the Act and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Ld. Authorized Representative ("AR", for short) for the assessee at the very outset of the hearing of the appeal, submitted, that both the lower authorities had failed to appreciate the facts involved in the case in the right perspective and had most arbitrarily imposed the penalty u/s 271D of the Act. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the JCIT, Range-II, Amritsar, had failed to record his satisfaction while saddling the assessee with penalty u/s 271D of the Act. It was averred by the Ld. AR that a bare perusal of the penalty order revealed a clear absence of application of mind by the JCIT, who had mechanically imposed the penalty u/s 271D of the Act. Ld. A.R drawing support from Article 14 of the Constitution of India, submitted, that the same therein contemplates that the state shall not deny to any person equality before law. It was submitted by Ld. AR that where an Act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 which requires that State action must be based on valid relevant principles applicable alike to all similarly situate and, it must not be guided by any extraneous or irrelevant considerations, because, that would amount to

denial of equality. Backed by his aforesaid contention, it was submitted by the Ld. AR that when a discretionary power is conferred on an authority, then, it is incumbent on the part of the said authority to exercise that power after applying its mind to the facts and circumstances of the case in hand. It was submitted by the Id. AR that in case the authority vested with a discretionary power fails to apply its mind and acts mechanically, i.e., without due care and caution or without a sense of responsibility in exercise of its discretion, then, order passed by him would be bad in law. It was further submitted by the Ld. AR, that it is the duty of the courts to see that all authorities exercise their power properly, lawfully and in good faith. In the backdrop of his aforesaid contention, it was the claim of the Ld. AR, that as the JCIT, Range-II, Amritsar, while saddling the assessee with an exorbitant penalty u/s 271D of the Act had failed to apply his mind to the facts as were there before him, therefore, his order could not be sustained and was liable to be quashed. In order to buttress his claim that the JCIT, Range-II, Amritsar had had passed the impugned order mechanically, i.e., without application of any mind, the Id. A.R had drawn our attention to the fact that the JCIT in his order passed u/s 271D, dated 14.11.2013 had not even referred to the dates on which the impugned cash loans were stated

to have been received by the assessee. It was the claim of the Ld. AR that the JCIT had merely acted on the basis of the information that was shared with him by the AO, i.e., the Income Tax Officer, Ward 2(3), Batala, and without applying his mind to the facts of the case before him had mechanically subjected the assessee to penalty u/s 271D of the Act. It was submitted by the Ld. AR that Sec. 273B of the Act, inter alia, carves out an exception to the triggering of the penal provisions contemplated in Sec. 271D of the Act, i.e, in a case where the assessee is able to establish that there was a reasonable cause for having received the loan in cash, i.e., not as per the modes contemplated in Sec. 269SS of the Act, then, he was not to be subjected to penalty u/s 271D of the Act. Backed by the aforesaid fact, it was the claim of the Ld. AR that as the JCIT in the present case had merely acted on the information provided by the AO and not independently applied his mind to the facts involved in the case before him, therefore, he had remained oblivious of the reasonableness of the cause due to which the assessee had raised the loan in cash. Adverting to the reasons for raising the cash loans in question, it was submitted by the Ld. AR that Sh. Navtej Singh (supra), the assessee's cousin had on both the occasions, i.e, on 19.09.2008 and 27.10.2008 withdrawn money from his bank account with

Oriental Bank of Commerce and deposited the same in the assessee's bank account with Indian Overseas Bank, Batala. It was submitted by the Ld. AR that on both the occasions the assessee was absolutely unaware about the cash deposited by Sh. Navtej Singh (supra) in his bank account, and had learnt about the same only when the latter had informed him about the same on phone. Ld. A.R in order to support his aforesaid claim had drawn our attention to the respective affidavits, dated 16.01.2014 of the assessee and Shri. Navtej Singh (supra), Page 56-61 of APB. Elaborating on the reasons leading to the aforesaid transactions, i.e., deposit of cash by Navtej Singh (supra) in the bank account of the assessee, it was the claim of the Ld. AR that as the assessee had intended to shift to Canada, therefore, for reflecting a good bank balance in his bank account which would have helped him in getting a visa from the Canadian embassy, the aforementioned person, viz. Sh. Navtej Singh had by taking recourse to the aforesaid bonafide transaction financially assisted him. It was claimed by the Ld. AR as the aforesaid transaction between the assessee and Sh. Navtej Singh (supra), his real cousin, was a bonafide transaction, and the source of the funds in question were admittedly explained, therefore, no penalty u/s 271D was called for in the hands of the assessee. In order to

buttress his claim that the source of the money was duly explained, it was submitted by the Ld. AR that the cash loan transactions in question were duly accounted for in the books of accounts of both the parties, i.e., the assessee and Sh. Navtej Singh (supra), and the CIT(A) while disposing off the assessee's quantum appeal had not drawn any adverse inference as regards the same. It was further submitted by the Ld. AR that as the penalty u/s 271D had been imposed by the JCIT, Range-II, Amritsar for technical and venial breach of the provisions of the Act, and not on account of any malafide intention on the part of the assessee, therefore, in all fairness the penalty imposed on the assessee u/s 271D could not be sustained and was liable to be vacated. It was further submitted by him that as the loan transaction between the assessee and Shri. Navtej Singh, i.e, assessee's cousin brother, were bonafide transaction within the family, therefore, no penalty u/s 271D was liable to be imposed on the assessee. In support of his aforesaid contention reliance was placed by the Id. A.R on the judgment of the Hon'ble High Court Punjab & Haryana in the case of CIT v. Sunil Kumar Goel [2019] 315 ITR 363 (P&H). In the backdrop of his aforesaid contentions the Ld. AR had tried to impress upon us that the penalty imposed on the assessee u/s 271D could not be sustained and was

liable to be vacated, for the reason, viz. (i) that the JCIT, Range-II, Amritsar had imposed the penalty u/s 271D, vide his order dated 14.11.2013 in a mechanical manner, i.e., without any application of mind to the facts involved in the case before him; (ii) that no penalty u/s 271D could have been imposed as regards the bonafide loan transactions within the family; (iii) that as there was a reasonable cause for the assessee to have received cash loans, therefore, on that count too penalty u/s 271D could not have been validly imposed on him; (iv) that as the source of the loan funds in question received by the assessee from Sh. Navtej Singh (supra) were admittedly duly explained, therefore, on the said ground also no penalty u/s 271D was liable to be imposed; and (v) that as the loan transaction in question was executed in the family, i.e., between the assessee and his real cousin, therefore, no penalty qua a technical and venial breach of the provisions of the Act could have been imposed as regards such bonafide transactions. At this stage, we may herein observe, that in order to verify the authenticity of the claim of the assessee of having received the aforesaid cash loan from his cousin, viz. Sh. Navtej Singh (supra), for the reason that the latter wanted to assist him in reflecting a good bank balance which would have facilitated obtaining a visa from the Canadian

Embassy, we called upon the Ld. AR to produce the documents which would evidence that the assessee at the relevant point of time had either applied for, or was in process of applying for a visa to Canada. However, neither the Ld. AR placed on our record any document in support of his aforesaid claim nor sought any further time to do the needful. In fact, on being called upon by the bench that he may take some further time for furnishing the supporting documents, the Id. A.R expressed his inability to do so. Backed by his aforesaid contentions, it was submitted by the Id. AR that the penalty imposed by the JCIT, Range-II, Amritsar u/s 271D could not be sustained and in the totality of the facts therein involved did merit to be vacated.

7. Per contra, the Ld. Departmental Representative (DR) relied on the orders of the lower authorities. It was submitted by the Ld. DR, that it was never the claim of the assessee in the course of the proceedings before the lower authorities that the cash loans in question were raised by him from Shri. Navtej Singh (supra) to facilitate his immigration to Canada. It was submitted by the Id. DR that the aforesaid claim of the assessee was devoid and bereft of any merit and did not merit any acceptance. In so far the claim of the Ld. AR that the assessee during the penalty proceedings was not

afforded sufficient opportunity of being heard by the JCIT, it was submitted by the Ld. DR that as the assessee had in the course of the said proceedings sought for an adjournment on a frivolous ground, i.e., not for the reason that he wanted some further time to furnish any reply, but for reasons which had no relevance or bearing on the proceedings under consideration, viz. (i) that as the quantum appeal was pending before the CIT(A), therefore, the penalty proceedings be kept in abeyance; and (ii) that the assessee's application u/s 154 as regards his quantum assessment was pending before the ITO, Ward-2(3), Batala. It was submitted by the Ld. DR that as neither of the aforesaid reasons on the basis of which the assessee's counsel had sought an adjournment had any bearing or relevance in context of the penalty proceedings that were pending before the JCIT, which as per Sec. 275 of the Act were to get time-barred within a period of six months from the end of the month in which action for imposition of the same was initiated, therefore, the JCIT had after considering the entire facts of the case rightly proceeded with the matter and passed the order u/s 271D, dated 14.11.2013. Adverting to the claim of the Ld. AR that no penalty u/s 271D r.w.s 273B could be validly imposed for a technical infraction of the provisions of the law, it was submitted by the Ld. AR that as both the

parties, i.e., the assessee, i.e, the borrower, and Shri. Navtej Singh (supra), the lender, were regular income-tax assessee's had consciously entered into the transactions in question, therefore, the assessee could not now be permitted to plead that there was a mere technical or venial infraction of the provisions of law. In support of his aforesaid contentions, it was submitted by the Ld. DR that as held by the ITAT, Amritsar in the case of M/s Charan Dass Ashok Kumar v. Addl. CIT Moga, ITA No. 369/2011, an ignorance of law cannot be taken as a justifiable reason for infraction of law. Backed by his aforesaid contentions, it was submitted by the Ld. DR that as there was no reasonable cause on the part of the assessee to have received a substantial amount of Rs. 1.36 crore as such loans, therefore, the provisions of Sec. 273B would not come to his rescue. Rebutting the claim of the Ld. AR that there was nothing discernible from the record that the parties in question had entered into a loan transaction, it was submitted by the Id. DR that Sh. Navtej Singh (supra) in the course of the remand proceedings had clearly stated that he had given a cash loan to the assessee. Further, taking us through the 'remand report', dated 08.05.2013, it was submitted by the Id. D.R that Shri. Balbir Singh, i.e, the assessee had also in the course of the remand proceedings admitted of having received cash loan of Rs.

1,36,50,000/- from Shri. Navtej Singh (supra), i.e, in two trenches, viz. (i). Rs. 29 lac; and (ii). Rs. 1,07,50,000/- a/w a loan of Rs. 5 lac through cheque out of which an amount of Rs. 6 lac was repaid in cash. On the basis of his aforesaid contentions, it was the claim of the Ld. DR that the JCIT had not acted in a mechanical manner, but in fact had after giving justifiable reasons for rejecting the assessee's reply, had imposed penalty u/s 271D of the Act. Further rebutting the claim of the assessee that the cash loans in question were raised by Sh. Navtej Singh (supra) for the purpose of reflecting a healthy bank balance which would have facilitated the assessee to obtain a visa from the Canadian Embassy, the Ld. DR, took us through the relevant extracts of the cash book of the assessee, i.e., Page 118 and Page 156 of APB wherein the cash loan transactions of Rs.29,00,000/- (supra) and Rs.1,07,50,000/- (supra) stood reflected. Our attention was drawn by the Ld. DR to the fact that out of the aforementioned respective cash loans of Rs. 29 lac (on 19.09.2008) and Rs. 1,07,50,000/- (on 27.10.2008) that were received by the assessee from Sh. Navtej Singh (supra), substantial amounts were withdrawn by the assessee either on the same day or within a short span of few days, i.e Rs.27 lacs (on 22.09.2008) and Rs. 1 crore (on 27.10,2008). In the backdrop by the aforesaid fact, it was submitted by the

Ld. DR that the very claim of the assessee of having raised the aforesaid substantial amount of cash loans from Sh. Navtej Singh (supra) for the purpose of building up a good bank balance to be shown to the Canadian embassy for obtaining a visa was disproved to the hilt, and in fact proved beyond doubt to be nothing but a concocted story. Also, our attention was drawn by the Ld. DR to the substantial cash withdrawals made by the assessee over the year which raised serious doubts about the purpose of having raised the cash loans in question. Backed by the aforesaid fact, it was the claim of the Ld. DR that as the assessee had not only violated the provisions of Sec. 269SS of the Act by raising substantial amount of cash loans aggregating to Rs.1,36,50,000/- (supra), but had also failed to come forth with any reasonable cause which would have justified the raising of the same on both the occasions i.e. otherwise than vide account payee cheques/drafts, therefore, no infirmity did emerge from the order of the JCIT, Range-II, Amritsar, who had rightly subjected him to penalty u/s 271D of the Act.

8. We have heard the Ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that

have been pressed into service by them to drive home their respective contentions. Admittedly, as is discernible from the records, an amount aggregating to Rs.1,36,50,000/- was deposited in cash in the bank account of the assessee, i.e., SB A/c No. 1912065230 with Indian Overseas Bank, Batala during the year under consideration, as under:

Date	Particulars	Amount
19.09.2008	Cash deposit	Rs. 29,00,000/-
26.10.2008	Cash deposit	Rs.1,07,50,000/-
	Total	Rs. 1,36,50,000/-

As observed by us hereinabove, the assessee in the remand proceedings (in the course of his quantum appeal), had stated, that the aforesaid amounts were loans that were received by him in cash from Sh. Navtej Singh (supra), who as stated by him was his first cousin. Backed by the aforesaid information that the assessee had raised cash loans, i.e, in contravention of the provisions of Sec. 269SS of the Act, the AO, vide his letter dated 13.08.2013 shared the same with the JCIT, Range-II, Amritsar. On a perusal of the records, we find that the assessee in the course of the remand proceedings had clearly admitted before the AO of having received interest free cash loans from Sh. Navtej Singh (supra) amounting to Rs.1,36,50,000/- [29,00,000/- + Rs.1,07,50,000/-] along with a further amount of Rs.5,00,000/- through

cheque, out of which he had stated to have repaid a sum of Rs. 6 lacs in cash. Also, it was observed by the AO that Sh. Navtej Singh (supra) had in the course of the remand proceedings accepted of having advanced loans to the assessee, i.e., both by way of cash and cheque. Relevant extract of the 'remand report' (Page 1-2 of 'remand report') reads as under :

"Sh. Navtej Singh explained that he is an income tax assessee. He is cousin of Sh. Balbir Singh Goraya. His PAN number is CINPS5919R. He is doing business of dairy at Manawala, Sale purchase of property and Agricultural income. He himself alongwith his mother are having Agri. Land approx 11 Kilas 2 Kanals after family's division. They sold Agri Land measuring 24 Kanals and 5 Marlas to Sai College of Engineering and Technology (Society) on 26.03.2008 through two sale deeds of Rs. 85,20,938/- and 17041875/- respectively and had given loan to Sh. Balbir Singh out of Joint account as he wants to go abroad. Sh. Navtej Singh accepted that he had given loan in the following manner :-

Date	Particulars		Amount
19.09.2008	Cash deposited in the bank		29,00,000/-
27.10.2008	do		1,07,50,000/-
17.07.2008	Amount through cheque		5,00,000/-
20.11.2008	Repaid to Navtej Singh	6,00,000/-	
	Total		1,41,50,000/-"

As is discernible from the aforesaid, it was stated by Sh. Navtej Singh (spura) that except for an amount of Rs.6,00,000/- that was repaid by him in cash on 20.11.2008, the balance amount of loan was outstanding. Also, as observed by us hereinabove, Sh. Navtej Singh (supra) had duly explained the source out of which the aforesaid amounts were advanced by him to the assessee.

9. Backed by the aforesaid information, we find that the JCIT, Range-II, Amritsar, vide his 'Show cause' notice (SCN), dated 17.10.2013 had called upon the assessee to explain that as to why penalty u/s 271D of the Act may not be imposed on him for having received the loans aggregating to Rs.1,36,50,000/- (supra) in cash from Sh. Navtej Singh (supra). Although, the aforesaid 'SCN', dated 17.10.2013 was duly got served upon the assessee vide registered post a/w a personal service on him, however, he failed to comply with the same and did neither appear before the JCIT nor filed any reply. Accordingly, the JCIT in all fairness issued another 'SCN', dated 01.11.2013, in compliance whereto the assessee's counsel, viz. Sh. S. K. Bansal, Advocate filed an adjournment letter, which read as under:

"With reference to your penalty notice dated 1.11.13, I may submit as under:

1. The brief facts are that the Ld. A.O. made huge addition in the case of Balbir Singh Goraya for A.Y. 2009-10 and the appeal of the same is pending with CIT(A), Amritsar.
2. During the course of appeal proceedings the CIT(A) called the remand report from the AO, Batala.
3. In the remand report dated 8.5.13 the Ld. AO Batala initiated penalty proceedings u/s 271D and 271E and the same is fixed up before Jt. CIT, Range-II, Amritsar for 12.11.13.
4. The appeal of the appellant is fixed for 20.11.13 before CIT(A) and the assessee's application u/s 154 is also pending before AO, Batala.
5. This application u/s 154 has a direct bearing with the appeal before CIT(A).

6. Therefore, it is prayed that the penalty proceedings u/s 271D and 271E may kindly be adjourned till the disposal of appeal by CIT(A).
7. Power of Attorney is enclosed."

However, the JCIT, being of the view that as the penalty proceedings u/s 271D were neither dependent on the fate of the quantum appeal of the assessee which was pending disposal before the CIT(A), Amritsar; nor on the outcome of his application that was pending with the ITO, Ward 2(3), Batala u/s 154 of the Act, therefore, had proceeded with the penalty proceedings. Observing, that the assessee had not denied the fact of having received cash of loans of Rs.1,36,50,000/- from Sh. Navtej Singh (supra), a property dealer by profession, who too had accepted of having advanced the cash loans of Rs.29,00,000/- and Rs.1,07,50,000/- to the assessee, we find, that the JCIT holding a conviction that the assessee had raised the aforesaid loans in contravention of the provisions of section 269SS of the Act, subjected him to penalty u/s 271D of Rs.1,36,50,000/-, i.e., 100% of the amount of cash loans that were received by him.

10. After deliberating at length on the facts involved in the case before us, we find that the assessee undisputedly having received the cash loans aggregating to an amount of Rs.1,36,50,000/-, i.e, in contravention of the

modes contemplated in section 269SS of the Act, had clearly acted in defiance of law. In so far the claim of the Ld. AR that the JCIT, Range-II, Amritsar had imposed the penalty u/s 271D in a mechanical manner, i.e., without applying his mind to the facts of the case, we are unable to find any substance in the same. As observed by us hereinabove, the claim of the Ld. AR that the JCIT had merely acted upon the information which was shared with him by the AO, i.e., ITO, Range-II, Amritsar as regards the receipt of cash loan by the assessee from Sh. Navtej Singh (supra), and had without applying any mind to the facts of the case before him and also affording any opportunity to the assessee to put forth his case as to why he may not be subjected to penalty u/s 271D of the Act, had saddled him with an exorbitant penalty under the said statutory provision, we are afraid is based on incorrect facts and cannot be accepted. As observed by us hereinabove, the JCIT had vide 'SCN', dated 17.10.2013 and 01.11.2013 called upon the assessee to explain as to why he may be not be subjected to penalty u/s 271D of the Act. As is discernible from the records, we find, that in the course of the penalty proceedings before the JCIT, Range II, Amritsar, the assessee instead of coming forth with an explanation as to why he was not exigible to penalty u/s 271D of the Act, had adopted an

evasive approach, and for frivolous reasons which had no bearing on the penalty proceedings, i.e, pendency of his quantum appeal and application for rectification, had sought for keeping the said proceedings in abeyance. Apart from that, as observed by the CIT(A), and rightly so, as the penalty proceedings as per Sec. 275(1)(c) were to get time barred within a period of six months from the end of the month in which the same had been initiated, therefore, the same could not have been kept in abeyance. As regards the claim of the Ld. AR that the fact that the JCIT had in his order u/s 271D of the Act, dated 14.11.2013 had though referred to the amounts which were stated to have been received by the assessee as cash loan from Sh. Navtej Singh (supra), i.e., Rs. 29,00,000/- (supra) and Rs.1,07,50,000/- (supra), but had not referred to the dates on which the impugned loan transactions were entered between the aforesaid parties, therein, reveals that he had merely acted upon the information that was shared with him by the AO, i.e., ITO, Ward 2(3), Batala, and had in a mechanical manner, i.e., without any application of mind imposed the penalty u/s 271D on the assessee, we are afraid does not merit acceptance. Although, the JCIT, Range-II, Amritsar in the body of his penalty order u/s 271D, dated 14.11.2013 had not referred to the dates of the loan transactions, however,

we cannot remain oblivious of the fact that the assessee in the remand proceedings (in the course of the quantum appeal) had categorically admitted of having received cash loans aggregating to Rs.1,36,50,000/- [29,00,000/- + Rs.1,07,50,000/-]. Apart from that, we find that Shri. Navtej Singh (supra) had in the course of the remand proceedings specifically given the respective dates on which the cash loans were advanced by him to the assessee. Also, we cannot remain oblivious of the fact that the AO vide his letter dated 13.08.2013 had shared the details as regards the cash loans that were received by the assessee from Shri. Navtej Singh (supra), as under :

- “1. Rs.29,00,000/- received in cash from Navtej Singh and deposited in Indian Overseas Bank, Batala A/c No.191201000000234; and
2. Rs.1,07,50,000/- received in cash from Navtej Singh and deposited in Indian Overseas Bank, Batala A/c No.191201000000234.”

Further, we find that the JCIT, Range-II, Amritsar, vide his SCN dated 17.11.2013 and 01.11.2013 had clearly put the assessee to notice as regards the impugned cash loan transactions, as regards which penalty was sought to be imposed on him u/s 271D of the Act. Be that as it may, we are of the strong conviction that a mere absence of mentioning of the respective dates by the JCIT against the cash loan transactions in question

in his order u/s 271D, dated 14.11.2013, would by no means be fatal to the validity of the order so passed by him. We, thus, are unable to persuade ourselves to subscribe to the claim of the Ld. AR that the JCIT, Range-II, Amritsar, had without any application of mind imposed the penalty vide his order passed u/s 271D, dated 14.11.2013, and accordingly reject the same.

11. We shall now advert to the reasons given by the Ld. AR as regards raising of the loans by in question by the assessee in cash, i.e., in contravention of the modes contemplated in section 269SS of the Act. Before us, it is the claim of the Ld. AR, that as the assessee had planned to settle abroad, i.e., in Canada, therefore, Sh. Navtej Singh (supra), i.e, the assessee's cousin had in order to facilitate reflecting of good bank balance in the assessee's bank account, which would have facilitated him in obtaining a visa, had thus, by way of a financial assistance deposited the amount of cash loans on both of the aforesaid two occasions, i.e., on 19.09.2008 and 27.10.2008 in his bank account. It is further stated by the Ld. AR that the assessee had gathered about the aforesaid respective cash deposits in his bank account only after he was informed by Sh. Navtej Singh (supra). At the very outset, we may herein observe that the aforesaid explanation of the

assessee has been raised for the very first time before us, and nothing is discernible from the orders of the lower authorities which would reveal that the said plea was raised before them. Be that as it may, we find certain serious lapses in the aforesaid explanation of the assessee. Although, it is the claim of the Ld. AR that the aforesaid cash deposits were made in the assessee's bank account in order to facilitate reflecting of a good bank balance which would have assisted him in obtaining a visa from the Canadian embassy, we find, that a perusal of the 'cash book' filed by the assessee before us reveals an absolutely different story. On a perusal of the 'cash book' filed by the assessee before us, we find that out of an amount of Rs.29 lac (supra) that was received by the assessee as a cash loan from Sh. Navtej Singh (supra) on 19.09.2008 an amount of Rs.27 lac was withdrawn by him on 22.09.2008. In so far the cash loan of Rs.1,07,50,000/- that was received by the assessee from Sh. Navtej Singh on 27.10.2008, the same stood on no better footing, and an amount of Rs. 1 crore was withdrawn out of the same by the assessee on the very same date. Backed by the aforesaid facts, we are unable to persuade ourselves to subscribe to the claim of the Ld. AR that the cash loans in question were received by the assessee from Navtej Singh (supra) for reflecting a heavy bank balance, which in turn

would have facilitated obtaining of a visa by him from the Canadian embassy. Apart from that, as observed by us hereinabove, the Id. AR on specifically being directed by the bench to produce supporting documents which would substantiate his claim that the assessee had at the relevant point of time, either applied for, or, was in the process of applying a visa for Canada, had expressed his inability to do so. As a matter of fact, on being advised by the bench that the Id. AR may seek some further time for furnishing the aforesaid supporting documents, the latter had expressed his inability to do so. In the backdrop of the aforesaid facts, we are of the considered view, that the unsubstantiated explanation of the assessee as regards the reason for having raised the loans in question, in cash, i.e. in contravention of the mandate of law is nothing but a concocted story put forth by him to justify the aforesaid cash loan transactions entered into by him. Accordingly, finding no substance in the aforesaid explanation of the Id. A.R as regards the reasons for raising of the cash loans in question by him, we herein reject the same.

12. At this stage, we may hereinabove observe, that as both the assessee as well as the lender, viz. Sh. Navtej Singh (supra) are regular Income Tax assessee's, therefore, it is beyond comprehension that they were ignorant

about the mandate of law, as per which no loan in excess of an amount of Rs.20,000/- could have been raised otherwise than by way of an account payee cheque or bank account payee bank draft or use of electronic clearing system through a bank account. Even otherwise, as observed by the CIT(A), and rightly so, ignorance of law is no excuse. On a perusal of the records, we find, that the fact that the assessee was conversant about raising of the loans vide account payee cheques/demand drafts can safely be gathered from the fact that he had raised a loan of Rs.5 lac by cheque from Sh. Navtej Singh (supra), and also a loan of Rs.34,04,000/- through cheques from one Sh. Amrik Singh, out of which an amount of Rs.13,30,000/- was returned by him to the said latter person through cheques. Backed by our aforesaid observations, we are of a strong conviction that not only the assessee had contravened the provisions of section 269SS of the Act by receiving the loans aggregating to Rs.1,36,50,000/- in cash from Sh. Navtej Singh (supra), but had also failed to come forth with any reasonable cause for having raised such loans in cash, which would have otherwise justified triggering the provisions of section 273B of the Act. In the backdrop of our aforesaid deliberations, finding no substance in the appeal filed by the assessee, wherein he has assailed the order of the CIT(A) who had upheld

the penalty of Rs. 1,36,50,000/- imposed by the JCIT, Range-II, Amritsar u/s 271D of the Act, we uphold the same.

13. Resultantly, the appeal filed by the assessee is dismissed.

ITA No. 238/Asr/2016
Assessment Year 2009-10

14. We shall now advert to the appeal filed by the assessee against the order passed by the JCIT, Range-II, Amritsar u/s 271E of the Act, dated 14.11.2013. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. That Id. CIT(A) has erred in law while confirming the penalty u/s 271E by ignoring the facts on record, indicating that no loan is paid to Navtej Singh in cash of Rs.6 lacs on 20.11.2008, hence penalty is liable to be deleted.
2. That Id. JCIT, wrongly imposed penalty u/s 271E on the basis of Remand Report dated 4.3.13, filed to CIT(A) in quantum appeal, indicating Cash loan of Rs.6 lacs is paid on 20.11.08 to Mr. Navtej Singh, hence penalty is liable to be deleted.
3. That CIT(A) has wrongly mentioned that the appellant has filed modified grounds of appeal and those words liable to be deleted.
4. That order of Ld AO & Ld CIT (A) is bad in law, as well as, on facts.
5. That appellant craves to add or amend any ground of appeal before the appeal is finally heard or disposed-off.
6. That the order may kindly be modified or another consequential relief be allowed.”

15. Succinctly stated, on the basis of information received by the JCIT, Range-II, Amritsar from the ITO, Ward 2(3), Batala, that the assessee during the year under consideration, i.e, on 22.11.2008 had returned a loan of Rs.6,00,000/- in cash to Sh. Navtej Singh (supra), i.e., in contravention of the provisions of section 269T of the Act, the JCIT issued a SCN dated 17.10.2013, therein following upon the assessee to explain that as to why he may not be subjected to penalty u/s 271E of the Act. As the assessee failed to comply with the aforesaid notice, therefore, another SCN, dated 01.11.2013 was issued to him both through registered post and process server. In compliance, the assessee's counsel, viz. S.K. Bansal, Advocate filed an application seeking adjournment of the case, for the reason that the quantum appeal of the assessee was pending disposal before the CIT(A), and also that the assessee's application u/s 154 was pending before the AO. However, the JCIT being of the view that neither the outcome of the appellate proceedings in the quantum appeal of the assessee nor his application filed u/s 154 before the AO would have any bearing on the adjudication of the issue in hand, therefore, refused to adjourn the matter and proceeded with the same. Observing, that the assessee had not denied the fact of having returned the loans of Rs.6,00,000/- in cash to Sh. Navtej

Singh (supra), wherein the latter too had admitted of having received back the loan to the said extent in cash, the JCIT holding a conviction that the assessee had repaid the loan in question in contravention of the provisions of section 269T of the Act, thus, vide his order u/s 271E, dated 14.11.2013 saddled him with a penalty of Rs.6,00,000/-, i.e., 100% of the cash loan that was repaid by him.

16. On appeal, the CIT(A) not finding favor with the contentions advanced by the assessee therein upheld the penalty imposed by the JCIT, Range-II, Amritsar, u/s 271E of the Act and dismissed the appeal.

17. Aggrieved, the assessee has assailed the order passed by the CIT(A) upholding the penalty imposed by the JCIT, Range-II, Amritsar u/s 271E in appeal before us. In addition to the contentions that were advanced by the assessee as regards the bona-fide for having entered into cash loan transaction with his cousin brother, viz. Sh. Navtej Singh (supra), the Ld. AR further assailed the validity of the order passed by the JCIT u/s 271E of the Act, dated 14.11.2013, for the reason, that the same was passed by him on the basis of incorrect facts. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the JCIT in his order had wrongly stated that the assessee had returned the loan of Rs.6,00,000/- in cash to

Sh. Navtej Singh (supra) on 20.11.2008. It was stated by the Ld. AR that the aforesaid claim of the JCIT was factually incorrect as the assessee had not repaid any part of the outstanding loan in cash to Sh. Navtej Singh (supra) on 20.11.2008. In order to fortify his aforesaid contention the Ld. AR had drawn our attention to the assessee's cash book wherein no transaction of repayment of any loan in cash on the aforesaid date, i.e., 20.11.2008 to Sh. Navtej Singh (supra) was reflected. On a specific query by the bench as to whether the assessee had repaid loan of Rs. Lac to Shri. Navtej Singh, and if so, then on which date, the Id. A.R affirmed the transaction of repayment by the assessee of a loan of Rs. 6 lac in cash to Shri. Navtej Singh (supra), but stated that the same was not done on the said date. Elaborating on his aforesaid contention, it was submitted by the Id. AR that the aforesaid loan of Rs. 6 lac was repaid by the assessee in cash to Shri. Navtej Singh (supra) on 29.12.2008. In order to fortify his aforesaid claim the Id. AR had drawn our attention to the assessee's 'cash book' wherein the aforesaid transaction was recorded on the aforementioned date, i.e, 29.12.2008. Backed by the aforesaid facts, it was the claim of the Ld. AR as the very basis of imposition of the impugned penalty by the JCIT, Range-II, Amritsar was factually incorrect, therefore,

the order passed by him u/s 271E of the Act, dated 14.11.2013 could not be sustained and was liable to be vacated.

18. Per contra, the Ld. DR relied on the orders of the lower authorities. It was submitted by the Ld. DR that both the assessee and Sh. Navtej Singh (supra) in the course of their respective statements recorded in the remand proceedings (in the course of the quantum appeal), had admitted, that a part of the outstanding loan, i.e, an amount of Rs.6 lac was repaid by the assessee in cash. Our attention was drawn by the Ld. DR to the 'remand report', dated 08.05.2013, wherein the aforesaid fact of repayment of loan of Rs. 6 lac in cash was clearly discernible. In fact, it was stated by the Ld. DR that as per the details given in the remand report the loan of Rs.6,00,000/- was repaid by the assessee to Sh. Navtej Singh (supra) in cash on 20.11.2008. In the backdrop of his aforesaid contention, it was submitted by the Ld. DR that as the claim of the assessee's counsel was factually incorrect, therefore, the same did not merit acceptance and was liable to be rejected.

19. We have heard the Ld. Authorized Representatives for both the parties, and perused the orders of the lower authorities a/w the material

available on record. As is discernible from the record, it is a matter of fact that both the assessee and Sh. Navtej Singh (supra) had admitted that part of the outstanding loan, i.e, an amount of Rs. 6 lac (out of the total loan of Rs.1,40,50,000/-) was repaid by the assessee in cash to the aforesaid lender. On a perusal of the 'remand report', dated 08.05.2013, we find that it is therein observed by the AO that Sh. Navtej Singh (supra) had given the details of his loan transactions with the assessee, as under :

Date	Particulars		Amount
19.09.2008	Cash deposited in the bank		29,00,000/-
27.10.2008	do		1,07,50,000/-
17.07.2008	Amount through cheque		5,00,000/-
20.11.2008	Repaid to Navtej Singh	6,00,000/-	
	Total		1,41,50,000/-

(emphasis supplied by us)

20. On a perusal of the aforesaid details, it can safely, or in fact inescapably be gathered that a part of the outstanding loan, i.e, an amount of Rs.6 lac(supra) was repaid by the assessee to Sh. Navtej Singh (supra) on 20.11.2008. Also, we find that as observed by the A.O in his aforesaid 'remand report' (supra), Sh. Navtej Singh (supra) had admitted of having received back part of the outstanding loan of Rs.6 lac in cash from the assessee. At this stage, we may herein observe, that the assessee too in

the course of the remand proceedings (in his quantum appeal) had admitted of having repaid part of the outstanding loan, i.e, an amount of Rs. 6 lac (supra) in cash to Shri. Navtej Singh (supra). Backed by the aforesaid facts, we are of the considered view that undeniably the assessee had during the year under consideration repaid a part of the outstanding loan, i.e, an amount of Rs.6 lac (supra) in cash to Sh. Navtej Singh (supra). Although, we find that the cash book of the assessee does not reflect any transaction of any cash repayment of loan of Rs. 6 lac on 20.11.2008 to Sh. Navtej Singh (supra), however, the cash book of Sh. Navtej Singh (supra) on the said date, i.e., 20.11.2008 duly reflects the receipt of part of the outstanding loan of Rs.6 lac on the aforesaid date from the assessee. Be that as it may, we are of the considered view, that as Sh. Navtej Singh (supra) had not only admitted the fact of having received an amount of Rs. 6 lac(supra) towards part payment of the outstanding loan by the assessee, but had also accounted for the same in his 'cash book' on 20.11.2008, the same, thus substantially proves that the assessee had made the aforesaid repayment of the loan on the aforesaid date, i.e. on 20.11.2008. Our aforesaid conviction is all the more supported by the fact, that not only the assessee in the course of the remand proceedings (in the course of his

quantum appeal) had admitted of having repaid part of the outstanding loan, i.e, an amount of Rs. 6 lac in cash to Sh. Navtej Singh (supra), but even the copy of the 'cash book' of Sh. Navtej Singh (supra) supporting the aforesaid fact had been placed on our record by the assessee. As regards the accounting of the transaction of the repayment of cash loan of Rs. 6 lac by the assessee to Shri. Navtej Singh (supra) on 29.12.2008, i.e, as per the 'cash book' of the assessee as against the claim of Shri. Navtej Singh (supra) of having received back the same on 20.11.2008, we may herein observe, that as the 'cash book' of the assessee was not maintained by him in regular course, but as stated by the Id. A.R was compiled only in the course of the proceedings for explaining the transactions in question, therefore, the contents thereof do not inspire much of confidence as regards the authenticity of the facts discernible there from. Backed by our aforesaid observations, we are unable to persuade ourselves to subscribe to the claim of the Ld. AR that the JCIT, Range-II, Amritsar, had erred in imposing the penalty of Rs. 6 lac u/s 271E, vide his order dated 14.11.2013. Accordingly, not finding any infirmity in the view taken by the CIT(A) who had rightly upheld the penalty of Rs. 6 lac imposed by the JCIT, Range-II,

Amritsar u/s 271E of the Act, we herein dismiss the appeal filed by the assessee.

21. Resultantly, the appeal filed by the assessee is dismissed.

22. Resultantly, both the appeals filed by the assessee, i.e., in ITA No. 237/Asr/2016 and ITA No. 238/Asr/2016 are dismissed in terms of our aforesaid observations.

Order pronounced U/R 34(4) of ITAT Rules on 21.02.2022.

Sd/-
(Dr. M.L. Meena)
Accountant Member

Sd/_
(Ravish Sood)
Judicial Member

Date: 21.02.2022

GP/Sr./PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True copy

By Order