IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.2580/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2010-11)
&
आयकर अपील सं/ I.T.A. No.2581/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2010-11)

DCIT, CC-7(3) Room No.655, Aayakar Bhavan, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	M/s. Macrotech Developers Ltd. (Earlier known as to Kesarinandan Township Pvt. Ltd. which was merged with Lodha Impression Real Estate Pvt. Ltd.) 412, 17G, Vardhman Chamber, Cawasji Patel Street, Fort, Mumbai-400001. **PAN NO. AAECM7826P**

Cross Objection Nos. 275 & 276/Mum/2018
Arising out of I.T.A. Nos.2580 & 2581/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2010-11)

Kesarinandan Township Pvt. Ltd. 412, 17G, Vardhman Chamber, Cawasjee Patel Street Fort, Mumbai-400001.	**बनाम** / Vs.	DCIT, CC-7(3) Room No.655, Aayakar Bhavan, M. K. Road, Mumbai-400020.

आयकर अपील सं/ I.T.A. No.1482/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2012-13)
&
आयकर अपील सं/ I.T.A. No.1483/Mum/2017
(**निर्धारण वर्ष** / Assessment Years: 2012-13)

DCIT, CC-7(3) Room No.655, Aayakar Bhavan, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	M/s. Cowtown Infotech Services Pvt. Ltd. (Earlier known as Sumangla Developers & Farms Pvt. Ltd.) 412, 17G, Vardhman

		Chamber, Cawasji Patel Street, Fort, Mumbai-400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECM7826P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Vijay Mehta
Revenue by:	Shri Chhotarary (Special Counsel)

सुनवाई की तारीख / Date of Hearing: 19/05/2022
घोषणा की तारीख /Date of Pronouncement: 30/06/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeals preferred by the revenue against the action of the Ld. CIT(A) deleting the penalty levied by the additional CIT u/s 271D & 271E of the Income Tax Act, 1961 (hereinafter "the Act"). Since we note that the facts and the law involved in the captioned appeals for AY.2012-13 and AY. 2010-11 as well as C.O for AY.2010-11 are similar, we are inclined to adjudicate the aforesaid appeals by a common order and the result of the lead case for A.Y. 2010-11 will be followed in the other cases.

2. At the time of hearing, it was brought to our notice by the Ld. AR of the assessee that these appeals are pending from year 2017 onwards and even though five (5) years have elapsed, still the appellant/revenue keeps away from pursuing the appeals. And the issues raised in all the appeals are no longer res-integra being settled

by the Hon'ble Jurisdictional (Bombay) High Court and the Ld. CIT(A) in the impugned order has followed it. So the revenue appeal should be adjudicated. This submission of Ld. AR of the assessee was in the context that the non-appeared for the Department. In this context, we note that the appeal has been filed in 2017 and the matter was listed 17 times before and on the last occasion on 10.05.2022, this Tribunal when appraised that special counsel has been appointed to represent this appeal, we directed the DR's present before us on 10th May, to put the special counsel of Revenue on notice that appeal will be listed on 19th May. However when the appeal was listed on 19 May, none appeared for Revenue, especially the special counsel did not turn up. However, we note that the issue involved is no longer res-integra since the Hon'ble Jurisdictional High Court has settled the issues in similar/identical cases and it is settled that we are bound to follow the same ratio/precedents. So we are inclined to proceed to hear the appeals of the Revenue and the CO of the assessee; and adjudicate the impugned action of the Ld. CIT(A) after carefully examining the records/appeals/CO filed by the parties.

3. ITA. No. 2580/Mum/2017 for AY.2010-11 is revenue appeal against the deletion of penalty levied u/s 271D of the Act (for accepting the loan through journal entries violating provision of Section 269SS of the Act) and ITA. No.2581/Mum/2017 for A.Y. 2010-11 is against the action of the Ld. CIT(A) deleting the penalty levied u/s 271E of the Act (for repaying the loan through journal entry otherwise then through account payee cheque/draft in violation of

Section 269T of the Act) and CO by assessee supporting the action of Ld. CIT(A) deleting the penalty by levied in both the appeals for AY.2010-11. And ITA. No. 1482/Mum/2017 for AY. 2012-13 is against the action of the Ld. CIT(A) deleting the penalty u/s 271D of the Act for accepting the loan through journal entry from sister concern other than through the account payee cheque/draft in violation of Section 269SS of the Act and ITA. No.1483/Mum/2017 is against the action of the Ld. CIT(A) deleting the penalty levied under 271E of the Act for repaying loan from various sister concern through journal entry other than through account payee cheque/draft in violation of Section 269T of the Act.

4. The lead case being that of AY.2010-11, we note that the assessee is a private limited company engaged in the business of development and construction of Real Estate Properties and filed its return of income for A.Y.2010-11 declaring total income of Rs.4,950/- under the normal provisions of the Act and book profit of Rs.11,31,373/- u/s 115JB of the Act. Later, the case of the assessee was selected for scrutiny and after issuance of statutory notices. The AO noted during the course of assessment proceedings that the assessee had accepted/repaid loans from various sister concerns through journal entry other than by the account payee cheque/draft (prescribed method envisaged u/s 269SS/269 of the Act). Therefore, the AO issued the show cause notice to the assessee as to why the penalty u/s 271D/271E of the Act should not be levied for violation of Section 269SS/269T respectively of the Act.

5. Pursuant to the show cause notice, the assessee filed detailed submissions stating that the journal entries have been passed due to business exigency to settle the business transaction amongst group companies and pleaded that the passing of journal entries does not constitute the transaction of loan/advances/deposit of money and pointed out that there was no actual money transfer taking place between each other. Therefore, according to the assessee, penalty u/s 271D/271E of the Act is not attracted. However, Additional CIT did not accept the contention of the assessee and levied penalty u/s 271D and 271E of the Act by separate orders dated 10.09.2014 passed u/s 271D/271E of the Act respectively against the assessee. Aggrieved by the penalty levied, the assessee preferred an appeals before the Ld. CIT(A) who was pleased to delete the same by relying on the decision of this Tribunal in assessee's group case (ITA. No.475 to 481/Mum/2014 dated 27th June, 2014) wherein similar penalty was levied u/s 271D for accepting the loans through journal entries which according to authorities were in violation of the provisions of Section 269SS; and likewise penalty was levied u/s 271E of the Act for repayment of loan through journal entries in violation of provision of Section 269T of the Act and the Tribunal was pleased to delete both the penalties levied u/s 271D/271E of the Act. Relying on the Tribunal decision, (wherein the Hon'ble Bombay High Court was cited) the Ld. CIT(A) decided in favour of the assessee by deleting the penalty levied u/s 271D and 271E of the Act by holding as under: -

"23. Now, we shall take up the applicability of provisions of section 273B of the Act qua the reasonable cause to be proved by the assessee. The provisions of section 273B of the Act reads as under:

"Section 273B. Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of [section 271, section 271A, [section 271AA], section 271B, [section 271BA], [section 271BB,] section 271C, [section 271CA,] section 271D, section 271E, [section 271F, [section 271FA,] [section 271FB,] [section 271G,]] [section 271H,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or [section 272B or] [sub-section (1) [or sub-section (1A)] of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable 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.]"

24. Brief facts of the present case are that the assessee belongs Lodha group of cases and there are large number of transactions involving the receipts and payments of loans and advances among the sister concerns of the Lodha group settled by way of „journal entries". During the assessment proceedings, AO asked the assessee to show cause as to why loans were accepted / repaid other than by the account payee cheque / draft. In this regard, assessee informed that the said loans / advances were transacted with the sister concerns only by way of „journal entries" and there is no cash transactions involved the provisions of section 269SS and 269T have no application to the facts of the case. Thus, it is the case of the assessee that the said transactions with the sister concerns are for commercial reasons and they should be kept outside the scope of the provisions of sections 269SS/269T of the Act. During the penalty proceedings before the Addl CIT, there was an inquiry into the reasons for violation of the said provisions of the Act and the assessee explained the said reasons (vide para 7.5 of the penalty order) which are already extracted above. The Addl. CIT did not consider the „explanations" as the „reasonable causes" and imposed the penalties in all the seven cases under consideration.

25. During the first appellate proceedings also, assessee made a detailed submission on various aspects of the reasonable causes which were already discussed in the paras above. On perusal of the impugned order, we find that CIT (A) relied heavily on the judgment of the jurisdictional High Court in the case of Triumph International (I) Ltd, supra dated 17.8.2012 for the proposition that the receiving loans and

repayments through „journal entries" constitutes „violation" within the meaning of provisions of section 269SS and 269T of the Act. The contents of para 9 of the said judgment are relevant here which read as under:

"9. The question as to whether loans / deposits can be repaid by debiting the accounts through journal entries has been considered by this Court in the assessee"s own case in Income Tax Appeal No.5746 of 2010 decided on 12 th June, 2012. Applying the ratio laid down therein we hold that receiving loans / deposits through journal entries would be in violation of section 269SS of the Act. However, as rightly contended by Mr. Pardiwala, Ld Senior Advocate appearing on behalf of the assessee, the transactions in question were undertaken not with a view to receive loans / deposits in contravention of section 269SS but with a view to extinguish the mutual liability of paying / receiving the amounts by the assessee and its sister concern to the customers. In the absence of any material on record to suggest that the transactions in question were not reasonable or bona fide and in view of section 273B of the Act, we see no reason to interfere with the order of the Tribunal in deleting the penalty of Rs. 22.99 Crs."

26. From the above, it is evident that the Hon"ble High Court has granted relief to the assessee on finding that there is no material to suggest that the transactions in question are not reasonable or bona fide. Of course, it is the finding of the Honble High court that the impugned journal entries in that case do not escape the rigors of the provisions of section 269SS/269T of the Act. The CIT (A) did not appreciate the „reasons" given by the assessee for receiving loans and advances through „journal entries" as „reasonable causes". It is the finding of Honble High court in the case of M/s Triumph International Ltd supra, that „the transactions in question were undertaken not with a view to receive loans / deposits in contravention of section 269SS but with a view to extinguish the mutual liability of paying / receiving the amounts by the assessee and its sister concern to the customers. In the absence of any material on record to suggest that the transactions in question were not reasonable or bona fide and in view of section 273B of the Act, we see no reason to interfere with the order of the Tribunal in deleting the penalty.." He ignored the above finding of the Court and confirmed the penalty levied by the Addl. CIT. Aggrieved with the above decision of the CIT (A), the assessee is in appeal before the Tribunal with the argument that the assessee"s reasons constitutes a reasonable cause.

27. During the proceedings before us, Ld Counsel for the assessee summarized all the transactions involving all the sister concerns and grouped the various transactions

entered in the books of accounts by way of journal entries into 7 categories. The details of these seven groups are submitted as under:

1 Alternate mode of raising funds; 2 Assignment of receivables; 3 Squaring up transactions; 4 Operational efficiencies/MIS purpose; 5 Consolidation of family member debts; 6 Correction of errors; and 7 Loans taken in case

27.1. All the transactions that involved the impugned journal entries fall in one of the above seven reasons and they are only for „business purposes" of the assessees" under consideration.

28. Further, the assessee also classified the impugned transactions amoung the said seven groups and the said chart is inserted here as under for completeness of this order:

Classification of reasonable causes

The chart showing the details of groups of the transactions to which falls into each of the group are tabulated as under:

Lodha builders Pvt. Ltd.

Assessment Year 2009-10

Appeal No.476/Mum/2014

Penlaty levied under section 271D of the I.T. Act, 1961 Sl No.1, 2, 3, 4, 5, 6 & 7 refer to the categories mentioned in the preceding table inserted in page 23 of the order relating to „Classification of Reasonable Causes".

29. Submission of the assessee justifying the claim of immunity u/s 273B of the Act to the impugned journal entries is as under:

a) "The seven categories of entries and a very brief explanation. b) These entries are with sister concerns and associates. The view in the penalty order that Durgeshwari is an independent concern is incorrect because penalty order itself starts with the sentence that "Assesee has taken from sister concerns". c) It has been proved before the Addl. CIT and CIT (A) that there is absolutely no cash involved and the source can be traced to A/c payee cheques only. Addl. CIT has failed to refute this but only in order to strengthen his case on flimsy ground he makes a presumptive assertion that these entries has been passed to camouflage the sources and to evade tax. d) There is no attempt either in assessment order or in order to doubt the source of the entries and to take any consequential action under relevant provisions of the Income Tax Act. So, appellant"s on source of entries being A/c payee cheque is correct."

30. It is the submission of the assessee that the Hon'ble High Court has laid down the broad principles for determining the „reasonable cause" within the meaning of

section 273B of the Act. The judgment in the case of Triumph International (I) Ltd dated 12.6.2012 (this judgment is different from that of judgment of Triumph International (I) Ltd dated 17.8.2012) and it explains the guidelines for the expression "reasonable cause".

31. The contents of paras 23 and 24 of the said of judgment of the Hon'ble High Court in the case of Triumph International (I) Ltd, dated 12.6.2012 reported in 345 ITR 370 (Bom) are relevant and the same reads as under:

"23. The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under Section 271E would have to be construed liberally depending upon the facts of each case.

24. In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account-payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an empty formality to repay the loan/deposit amount by account-payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee. The fact that the assessee company belongs to the Ketan Parekh Group which is involved in the securities scam cannot be a ground for sustaining penalty imposed under Section 271E of the Act if reasonable cause is shown by the assessee for failing to comply with the provisions of Section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause and, therefore,

the decision of the Tribunal to delete the penalty imposed under Section 271E of the Act deserves acceptance."

32. From the above extracts from the judgment of jurisdictional High court, it is clear that the journal entries are hit by the relevant provisions of section 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/squire up the transactions, is not the intention of the provisions of section 269SS of the Act, when the transactions are otherwise bonafide or genuine. Such reasons of the assessee constitute „reasonable cause" within the meaning of section 273B of the Act. In the light of the above ratio of judgment, we analyse the facts of the present case here as under.

33. We find that there is no finding of AO in the order of the AO during the assessment proceedings that the impugned transactions constitutes 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 Honble 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 assessees 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 or 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 thejournal 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, to consolidate the debts, to correct the clerical errors etc. In the language of the Hon"ble High court, the said „journal entries" constitutes 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 section 269SS and 269T do 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 facts of the present case, in our opinion, though the assessee has violated the provisions of Section 269SS / 269T of the Act in respect of journal entries, the assessee has shown reasonable cause and, therefore, the penalty imposed under Section 271D/E 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 para 16 to 22 of the this order. Accordingly, the grounds raised in this regard are allowed.

5.4.4 Respectfully, following the above decision, the contention of the appellant that the journal entries are not covered within the provisions of Section 269SS is rejected. However, the transactions covered by the journal entries are made in regular course of business with the sister concerns by the appellant. Even in the present case, there is no averse finding of the AO either in the penalty order 271D of the Act or in the remand report dated 09.08.2016 that any of the impugned transactions is aimed at non-commercial reasons and outside the normal business. Therefore, thought the appellant has violated the provisions of section 269SS of the Act in respect of journal entries, it has shown reasonable cause and therefore, the penalty under section 271D is not leviable.''

6. Aggrieved by the aforesaid action of the Ld. CIT(A) deleting the penalty u/s 271D & 271E of the Act, the revenue is before us.

7. After hearing the Ld. AR and carefully going through the records of the case as well as the case laws brought to our notice, we note that the assessee has passed journal entries in the books of accounts which according to assessee were liabilities that were transferred/assigned by the group companies or give effect of actionable claim/payments/received by the group companies on behalf of the company and also in respect of reimbursement of expenses and for sharing of expenses with in the group. According to assessee the aforesaid transaction by journal entries doesn't attract section 269SS or 269T of the Act because there is no cash transaction at all. However, according to AO, the assessee has accepted/repaid loans from various sister concern through journal entry other than the account payee cheque/draft, which was in violation of Section 269SS/269T of the Act. As far as transaction of accepting/repayment of loan/advance/deposit through journal entries are concerned, we find that it is an admitted fact, so there is no dispute about it and there is no need to examine it. Then the next issue is whether such transactions through journal entries, i.e. *the acceptance/repayment of loan/advance/deposit* is in violation of modes specified in Section 269SS & Section 269T of the Act. We find that the said issue is no longer res-integra as held by the Hon'ble Bombay High Court in CIT Vs. Triump International (345 ITR 270) wherein their Lordships held

that the receipt of any advance/loan by way of journal entries is in breach of Section 269SS of the Act. In such a scenario, the next question is whether penalty is leviable for breach of Section 269SS/269T of the Act. In the present cases, the Additional CIT has levied the penalty on both counts i.e. for breach of Section 269SS by levying penalty u/s 271D and for breach of Section 269T by levying penalty u/s 271E of the Act. However as seen (supra), the Ld. CIT(A) has deleted the penalties levied on both counts. Before us the Ld AR defending the action of Ld. CIT(A) submitted that in similar cases, this Tribunal after taking notice of the decision of Hon'ble High Court in Triumph International (supra) held in the group cases of assessee[M/s. Lodha Builders Pvt. Ltd. Vs. ACIT and others [ITA. No.476/Mum/2014 & 481/Mum/2014 for AY.2009-10 and other cases by common order dated 27.06.2014] that even though there was violation of Section 269SS/269T of the Act, however penalty u/s 271D/271E of the Act is not imposable in view of Section 273B of the Act. And that the revenue's appeal against the Tribunal's decision of 27.06.2014 was upheld by the Hon'ble Bombay High Court in Income Tax Appeal No.213 of 2015 dated 06.02.2018. Thus, according to Ld. AR, the facts in the present appeals (except figures) and the case decided by the Tribunal (in Group case of M/s. Lodha Builders Supra) are identical and therefore the decision of the Hon'ble Bombay High Court is squarely applicable and therefore no penalty is leviable u/s 271D/271E of the Act.

8. Having held that though the assessee's action of passing journal entries in respect of receipt/repayment advance/loan is in violation of mode prescribed u/s 269SS/269T of the Act, now we have to examine the main plea of the assessee that penalty is not leviable, since there was *reasonable cause* as per section 273B of the Act. According to assessee, until the judgement of Hon'ble Bombay High Court in the case of CIT Vs. Triump International Finance (supra), the consistent view taken by the Tribunal was that journal entries showing acceptance/repayment of loan/advance does not attract/violate Section 269SS & 269T of the Act because there was no actual transfer of money. In this context, it is noted that until the Hon'ble Bombay High Court held in the case of Triump International (supra) in June, 2012, the assessee bonafidely believed that passing of journal entries was permissible manner to adjust the accounts within group concerns. In the aforesaid back-drop, the assessee pleads that it bonafidely believed that such passing of journal entries was permissible and so it had reasonable cause for passing journal entries even though it violated the mode prescribed in Section 269SS & Section 269T of the Act and so, no penalty should be saddled on the assessee. We note that the assessee had taken *inter-alia* such a plea also before the Hon'ble High Court, wherein the Hon'ble High Court upheld such a contention and gave relief to the assessee. We find that the issue before us is no longer res-integra. We note that till the time of passing of the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs. Triumph International Finance (India) Limited (supra) which is binding upon us

wherein it was held by their Lordship's that the action of the assessee accepting/repaying the loan/deposits through journal entries to its sister concerns other than through account payee cheque/draft (prescribed mode prescribed therein) is in violation of Section 269SS/269T of the Act. Therefore, prima facie the penalty u/s 271D/271E of the Act is attracted. However, the assessee's plea against imposition of penalty is that there is "*reasonable cause*" for passing the journal entries. For that assessee has relied on the Section 273B of the Act which provides that if the assessee is able to show *reasonable cause* then penalty need not be imposed. As per Section 273B which is an over-riding provision (*non-obstante clause*) wherein we note that Parliament has specified several penalty provisions in it including, penalty u/s 271D/271E of the Act in its fold and as per it, penalty may not be imposed on the assessee for the failure referred to the extant penalty provision [*i.e, Section 271D & 271E*], if the assessee proves that there was "reasonable cause" for the said failure to adhere to the law (herein this case to accept/repay of the loan/advances/deposit other than through draft/ account payee cheque). Now in view of Section 273B of the Act, we have to examine the plea of the assessee that since there was "reasonable cause" for the failure to adhere to the mode prescribed while receiving/repaying the laon/advance, no penalty u/s 271D/271E of the Act is imposable. According to assessee, till the time Hon'ble Jurisdiction High Court in the case of M/s. Triumph International Finance (India) Limited (supra) had held that the deposits/loans received through journal entries do fall

within the mischief of Section 269SS of the Act so as to invite penalty under Section 271D of the Act, the assessee was under bonafide belief that passing of journal entries in their books of accounts was an accepted practice of netting off/ assigning off of debts against the liability/creditor and doesn't offend Section 269SS & 269T. This bonafide belief of assessee emanated from the decision of this Tribunal is plethora of cases which held the field until over-turned by the decision of Hon'ble High Court in Triumph International Finance (India) Limited (supra) which was rendered on 12th June, 2012 and the assessment years before us are AY. 2010-11 (transaction between 01.04.2010 to 31.03.2010 and AY.2012-13 (i.e. transaction between 01.04.2011 to 31.03.2012). Therefore, according to the Ld. AR, in such a back ground, no penalty ought to be levied u/s 271D or 271E of the Act and the Ld. AR drew our attention to the several case laws of the Tribunal as well as the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Noida Brodge Co. Ltd. (262 ITR 260 Del HC) wherein it was held that in lieu for payment of Rs.4.85 crores made by journal entries in its books of account by crediting the account of ILFS, would not fall foul of Section 269SS of the Act when particularly when there was no payment of cash. According to the Ld. AR of the assessee, when the assessee was under bonafide belief that passing of journal entry would not fall foul of Section 269SS/269T of the Act, therefore the penalty u/s 271D/271E of the Act should not be levied as provided u/s 273B of the Act. We find force in the submission of the Ld. AR since we note that such a contention was

raised by assessee, and which has been upheld by the Hon'ble Bombay High Court in the case of CIT Vs. Lodha Builders Pvt. Ltd. and others (ITA. Nos. 213, 218, 219 of 2015) dated 06.02.2018 wherein the Hon'ble Bombay High Court has held (relevant portion only) as under: -

> *"(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of Triumph International (Supra) and decision of* ***V.H. Parekh (P) Ltd., Ketan V. Parekh****, Sunflower Builders (supra), Ruchika Chemicals (supra), Lala Murari Lal (supra) and the decision of the Delhi High Court in Noida Toll Bridge Co. Ltd. (supra) were holding the field. Thus, not in breach of Section 269SS of the Act. In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in Triumph International Finance (supra) has only clarified/stated the position as always existing in law, the receiving of deposits/loans through journal entries would certainly be hit by Section 269SS of the Act. Nevertheless, prior to the decision of this Court in Triumph International Finance (supra), there was reasonable cause for respondents to receive deposit/loan through journal entries. This non-compliance with Section 269SS of the Act would certainly be*

a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act.

(j) In the above circumstances, the view taken by the Tribunal in the impugned order holding that no penalty can be imposed upon the respondents as there was a reasonable cause in terms of Section 271B of the Act for having received loans/deposits through journal entries is at the very least is a possible view in the facts of the case."

(emphasis given by us)

9. In the light of the Hon'ble Bombay High Court upholding similar pleas of assessee and confirming the action of Tribunal wherein Tribunal held that since the assessee was on bonafide belief that passing of journal entries in respect of receipt/repayment of loan/advance would not be in breach of Section 269SS/269T of the Act, until the decision of Hon'ble High Court in Triumph International (supra) was a *reasonable cause*. So penalty u/s 271D/271E of the Act is not imposable. We note that in the present case the transaction by way of journal entry was done to raise funds from sister concerns, to adjust/transfer balances to consolidate debts. Further, we note that it is not the case of the AO in the assessment order that the journal entries were made with a view to achieve any other purposes outside normal business operations of the assessee; i.e. the impugned transactions constitutes unaccounted money and are not bonafide or not genuine. And we note that the transactions by way of journal entries were

resorted to for extinguishment of mutual liabilities between the assessee and the sister concerns of the group and there was no actual money transfer happening at all. We note that in the present appeals, the causes shown by the assessee for receiving or repayment of advance/loan/deposit otherwise than by account payee cheque/bank draft was on account of alternate mode of raising fund, assignment of receivables, squaring up transactions, correction of errors, operational efficiencies/ purpose, consolidation of family debts etc. And the aforesaid action of assessee's in the present appeals before us were carried out (journal entries) admittedly before the judgment of Hon'ble Bombay High Court in Triumph International (supra). Therefore, we are of the view that there was *reasonable cause* for assessee netting off/assigning off debt against liabilities through journal entries u/s 269SS/269T of the Act and as noted before the decision of the Hon'ble Jurisdiction High Court in Triumph International Finance (India) Limited (supra) was pronounced in 12 June, 2012; and the transaction in question were before 31.03.2012 (i.e. AY. 2012-13 & AY 2010-11) therefore, there was *reasonable cause* for journal entries being passed in respect of loan/advance. Therefore, non-compliance of Section 269SS of the Act in the facts and circumstances discussed (supra) is not a fit case for imposing of penalty u/s 271D of the Act since there was reasonable cause u/s 273B of the Act. Likewise, the non-compliance with Section 269T of the Act in the facts and circumstances discussed (supra) would not be a fit a case for imposing of penalty u/s 271E of the Act because there was "reasonable cause" as

envisaged u/s 271B of the Act. In the aforesaid facts and circumstances of the case, therefore, we confirm the order of the Ld. CIT(A) and dismiss the revenue appeal and on the same ratio as aforesaid *mutatis and mutandis* apply to other three (3) appeals of the revenue, so they also stands dismissed.

10. Coming to the Cross objection of the 275 & 276/Mum/2018 (ITA. Nos. 2580 & 2581/Mum/2017). These are cross objection preferred by assessee against the order of the CIT(A)-48, in not upholding the legal issue raise by the assessee that imposing of penalty u/s 271D/271E of the Act was barred by limitation.

11. At the outset, the Ld. AR, brought to our notice that this legal issue is no longer res-integra as held by this Tribunal in the case of group cases CIT Vs. Lodha Builders Pvt. Ltd. (ITA. No.6614, 6615 & 6617/Mum/2016) wherein this Tribunal as held as under: -

> 1. "Coming to the cross objections filed by the assessee, the assessee raised the following ground in its cross objections: -
>
> *"The Ld. CIT(A) ought to have held that the order u/s. 271D/271E of the Act was illegal and bad in law as it was passed beyond theperiod of limitation provided in clause(c) of section 275(1) of the Income-tax Act, 1961."*
>
> 2. Ld. Counsel for the assessee, at the outset submits that in all these cases the Addl. CIT passed penalty orders u/s. 271D/271E of the Act beyond a period of six months from the end of the month in which action for the imposition of penalty is initiated as specified in clause(c)

of section 275(1) of the Act and therefore, the orders passed u/s. 271D/271E of the Act are barred by limitation. Ld. Counsel for the assessee submits that on identical facts the Coordinate Bench of this Tribunal in ITA.No. 475 to 481/Mum/2014 dated 27.06.2014 in assessee own group case and associate company's cases held that the penalty orders passed u/s. 271D/271E were time barred.

3. We have heard the Ld. AR's submission and note that the tribunal in assessee's group cases after considering various decisions on the issue held that the Assessing Officer's referral to the Addl.CIT for imposition of penalty constitutes initiation for "action for imposition of the penalty" and that is the date which should be reckoned for the purpose of limitation as specified in clause(c) of section 275(1) of the Act. And the Tribunal held in assessee's group case Lodha Builders Pvt. Ltd. (supra) held as under:

"16. We have heard both the parties on the legal issues raised in the Additional Ground i.e., applicability of the provisions of clause (c) to section 275(1) of the Act to the impugned penalties and the manner of computing the limitation of time provided in the said clause. To decide the above issues, in our opinion, the provisions of section 275 of the Act are required to analysed. The same read as under:

"275(1)[(a) in a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals) undersection 246 [or section

246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever period expires later :

[Provided that in a case where the relevant assessment or other order is the subject - matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the commissioner (Appeals) is received by the Chief Commissioner or Commissioner, whichever is later;]

(b) ……

(c) In any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."

17. The said provisions are explained by various Honble High courts and Tribunal. To start with, Honble High Court of Rajasthan in the case of CIT vs. Hissaria Bros (supra) explained the said provisions vide the para 21 to 27 of the said judgment and the same are produced as under:

"21. By substituting section 275(1) which became operative from 01.04.1989, the provision of divided cases for the purpose of prescribing limitation for completing penalty proceedings into three categories:

(i) Category I covers cases where the assessment to which the proceedings for imposition of penalty relate is the subject - matter of an appeal to the Dy. CIT(A) or the CIT(A) under section 246 or with effect from 1 - 6 - 2000, section 246A or an appeal to the Tribunal under section 253;

(ii) CategoryII covers cases where the relevant assessment is the subject matter of revision under section 263; and

(iii) Category III covers all other cases not falling within category I and category II which is governed by clause (c).

By dividing into three categories the period of limitation for cases falling under category (i), i.e., clause (1)(a) is the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which the order of the Dy. CIT(A) or the CIT(A) or, as the case may be, the Tribunal is received by the Chief CIT or CIT, whichever period expires later.

22. The period of limitation for the cases falling under category II is six months from the end of the month in which such order on revision is passed and the period of limitation for the cases falling under the above category III is the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. In the last category, filling of appeal in respect of order passed in proceedings during which penalty proceedings were initiated is not relevant.

To this effect a CircularNo. 551, dated 23-1-1990 [(1990) 82 CTR (St.) 325] and another Circular No. 554, dated 13-2-1990 [(1990) 82 CTR (St.) 280] were issued by the CBDT

23. A close scrutiny of section 275 which is reproduced hereinabove shows that clause (1)(a) covers those cases where the penalty proceedings are in respect of a default related to principal assessment for a particular assessment year and the penalty proceedings are required to be initiated in the course of that proceedings only. In such cases where the relevant assessment order or other orders are the subject - matter of an appeal to the CIT(A) under section 246 or an appeal to the Tribunal under section 253, after the expiry of the financial year in which the proceedings in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of CIT(A) or, as the case may be, of the Tribunal is received by the Chief CIT or CIT, whichever period expires later.

Apparently, clause (a) governs the categories which are integrally related to the assessment proceedings and are not independent of it.

24. We have also noticed that this provision was brought into effect in 1970 with effect from 01.04.1971- , so that proceedings may not require rectification or modification depending on the outcome of the appeal against the orders passed in the relevant assessment proceedings or the other proceedings in the course of which the penalty proceedings are required to be initiated.

25. We have also noticed that section 271 and 273 were the two original penalty provisions, which require the penalty proceedings to be initiated during the course of relevant assessment proceedings or the other relevant proceedings, as the case may be. The penalty proceedings could also be initiated during the appellate proceedings arising out of the relevant assessment proceedings. It is only where the assessment proceedings are independent and not directly linked to the assessment proceedings that the result of such proceedings in the course of which the penalty proceedings were initiated does not affect the levy of penalty. On such penalty proceedings, independent of

the assessment proceedings, clause (c) has been made applicable. In this category, the period of limitation for completing the penalty proceedings is linked with the initiation of the penalty proceedings itself.

In such cases, the penalty proceedings can be initiated independent of any proceedings but obviously, the penalty proceedings can be initiated only when the default is brought to the notice of the concerned authority which may be during the course of any proceedings and, therefore, for this type of cases where the penalty proceedings have been initiated in connection with the defaults for which no statutory mandate is there about any particular proceedings during the course of which only such penalty proceedings can be initiated, a different period of limitation has been prescribed under clause (c) as a separate category. In cases falling under clause (c), penalty proceedings are to be completed within six months from the end of the month in which the proceedings during which the action for imposition of penalty is initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. There is no provision under clause (c) for the extended period of limitation commensuration with completion of the appellate proceedings, if any, arising from the proceedings during the course of which such penalty proceedings are initiated as in the case where the penalty proceedings are linked with the assessment proceedings or the other relevant proceedings.

26. The expression "other relevant thing' used in section 275(1)(a) and clause (b) of sub - section (1) of section 275 is significantly missing from clause(c) of section 275(1) to make out this distinction very clear.

27. We are, therefore, of the opinion that since penalty proceedings for default in not having transactions

through the bank as required under sections 269SS and 269T are not related to the assessment proceedings but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and therefore, clause(a) of sub-section(1) of section 275 cannot be attracted to such proceedings. If that were not so, clause (c) of section 275(1) would be redundant because otherwise, as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default, e.g., penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if clause (a) was to be invoked, no necessity of clause (c) would arise."

18.Similar interpretations were taken by the ITAT, Rajkot Bench (Third Member) in the case of ACIT vs. Dipak Kantilal Takvani [2013] 39 taxmann.com 53 (Rajkot – Trib.) (TM) and the penalty orders u/s 271D and 271E of the Act, being unconnected to the income of the assessee, are to be considered as per the provisions of clause (c) of section 275(1) of the Act. The said Rajkot Bench of ITAT has followed the judgment of the Rajasthan High Court in the case of Jitendra Singh Rathore (supra). In this case, the Hon'ble High Court also observed that the first show cause notice for levy of penalty was issued by the AO though the authority obtained to initiate penalty proceedings has also subsequently issued a show cause

notice as well. Hon'ble High Court held that the penalty proceedings were initiated by issue of first notice from the AO and not from the date of issue of notice by the JCIT and thus, the penalty order passed after expiry of 6 months from the end of the month in which the action for imposition of penalty initiated was barred by limitation. The said decision of the ITAT in the case of Dewan Chand Amit Lal (supra) deferred at the relevant point of time that the order of the Tribunal in the case of Hissaria Bros (supra). However, it is a fact that the said decision of the Tribunal in the case of Hissaria Bros (supra) was subsequently upheld by the Hon''ble Rajasthan High Court. Therefore, considering the principle of precedence, it is necessary for the Tribunal to follow the order of the High Court where there is no contrary judgment from the jurisdictional High Court. As stated earlier, the said judgment from the Rajasthan High Court was also followed in the case of Jitendra Singh Rathore (supra). Therefore, in a case where the AO made a reference in the assessment order about the requirement of initiating the penalty proceedings and acted by making a reference to the JCIT, who is actually empowered by the statute to impose the penalty u/s 271D and 271E of the Act, the limitation should be counted right from the date of such reference in the assessment order / issue of show cause notice by the AO.

19. Further, the judgment of Honble Delhi High Court in the case of M/s Noida Toll Bridge Co. Ltd [262 ITR 260] (Del)is relevant. We have also come across another judgment of the same High court in the case of CIT vs. Worldwide Township Projects Ltd vide ITA No.232/2014, where Honble Delhi High Court explained the above said provisions in the context of penalty levied u/s 271D of the Act. Para 8 of the said judgment of the High Court is relevant here and the same reads as under:

"8. A plain reading of the aforesaid section indicates that (the import of the above

provisions is limited) it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to section 269SS of the Act which defines loan or deposit to mean "loan or deposit of money"The liability recorded in the books of accounts by way of journal entries, i.e., crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of section 269SS of the Act, because pasing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels M/s. PACL India Ltd made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s. PACL India Ltd. In view of this admitted position, no infringement of section 269SS of the Act is made out. This court, in the case of Noida Toll Bridge Co. Ltd (supra), considered a similar case where a company had paid money to the Government of Delhi for acquisition of a land on behalf of the assessee therein. The Assesing officer levied a penalty under section 271D of the Act for alleged violation of the provision s of section 269SS of the Act since the books of the assessee reflected the liability on account of the lands acquired on its behalf. On appeal, the CIT (A) affirmed the penalty. The order of the CIT was successfully impugned by the assesee before the IT AT. On appeal, this Court held as under:

"While holding that the provisions of section 269SS of the Act were not attracted, the Tribunal has noticed that (i) in the instant case, the transaction was by an account payee cheque; (ii) no payment on account was made in cash either by the assessed or on its behalf; (iii) no loan was accepted by the assessee in cash, and (iv) the payment of Rs. 4.85 crores made by the assesee IL& FS, which holds more than 30 per cent of the paid - up capital of the assessee, by journal entry in the books of account of the assessed by crediting the account of IL & FS.

Having regard to the aforenoted findings, which are essentially findings of fact, we are in complete agreement with the Tribunal that the provisions of section 269SS were not attracted on the facts of the case. Admittedly, neither the assessee nor IL &FS had made any payment in cash. The order of the Tribunal does not give rise to any question of law, much less a substantial question of law.

20. Thus, the judgment in the case of M/s Worldwide Township Projects Ltd vide ITA No.232/2014 is relevant for the proposition that the provisions of section 275(1)(a) of the Act would not be applicable to the penalties u/s 271D of the Act and the provisions of section 275(1)(c) would only be attracted. This is also relevant for another ratio that the period will be counted from the date of assessment order where the Assessing Officer decided to make a referral to the Addl. CIT.

21.On this aspect, following the said judgment, the Delhi Bench of the Tribunal in the case of Dinesh Jain ITA no 3794/Del/2013 held that it is the AO who applies mind during the assessment proceedings to the issues relating to the violation of section 269SS or 269T of the Act and therefore, the limitation should commence from the date of the Assessment Order. On the facts of squiring up of the

loans with the wife by way of „journal entries", Tribunal held that such "journal entries" are outside the scope of the relevant penal provisions. Thus, it is the decision of the High Court/Tribunals that the provisions of clause (a) of section 275(1) of the Act would not apply and in alternative, the provisions of section 275(1)(c) only be attracted in the matters of penalties levied u/s 271D/271E of the Act. Further, it is also held that the limitation period would be counted from the date of assessment order with the AO's decision to make referral to his Addl CIT, who is authorized to impose penalty.

22.In the instant case, it is an undisputed fact that the Assessing Officer discussed the details as to the violation of the provisions of section 269SS and 269T of the Act in the assessment order. It also contains a reference to the requirement of making a reference to the Addl. CIT, CR-6, Mumbai for necessary action. Para 6 of the assessment order, which is already extracted above paras, bears witness to the above findings. Further, to give effect to his findings in the assessment order, the AO wrote a letter to the Addl. CIT on 11.1.2012, intimating to him about the violation to the said provisions of the Act. On receipt of the said reference from the AO, Addl. CIT issued a show cause notice on 15.2.2012 calling for explanation of the assessee as to why the penalty u/s 271D should not be imposed in the case of the assessee. Eventually, Addl. CIT passed a penalty order u/s 271D of the Income Tax Act on 28.9.2012. Considering the fact that the assessment order is dated 5.12.2011 and as per the provisions of clause © to section 275(1) of the Act, 6 months from the end of the month in which the action was initiated expires on 30.6.2012. After considering the explanation of limitation u/s 275(2), Explanation 1 read with section 129 of the Act, extended limitation expires on 30.7.2012 against the above due dates, the penalty order passed by the Addl. CIT on 28.9.2012, which is barred by the limitation. Thus, the orders of the penalty of this kind have to be explained

> *considering the provisions of clause (c) of section 275(1) of the Act. Further, it is the summary of the decision cited above that any case where AO made a reference in the assessment order, after discussing the same with the assessee during the regular assessment proceedings or made a referral to the Addl. CIT for imposition of the penalty. In our opinion, these preliminary acts constitute "action for the imposition of penalty". An action for imposition of penalty is always anterior in time to the "actual" imposition of penalty. In our opinion, the AO"s discussion given in para 6 of the assessment order and AO"s letter dated 6 to the Addl. CIT constitutes "action for imposition of penalty". Therefore, we are of the opinion, the assessee should succeed on the legal issue. Accordingly, ground raised by the assessee is allowed."*

12. Even though the Ld. AR urged before us, this issue is covered in favour of the assessee however since we have already decided the matter in favour of the assessee by dismissing the appeal of the revenue. We are inclined not to adjudicate this issue since it will be academic and leave it open. Therefore, we dismiss the CO's filed by assessee.

13. In the result, all the captioned appeals preferred by revenue stands dismissed and the CO of the assessee also stands dismissed.

Order pronounced in the open court on this 30/06/2022

Sd/-	Sd/-
(GAGAN GOYAL) **ACCOUNTANT MEMBER**	**(ABY T. VARKEY)** **JUDICIAL MEMBER**

Mumbai; Dated 30/06/2022
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**