

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

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1406/MUM/2022 (A.Y. 2015-16)

DCIT – Central Circle – 7(3) Room No. 655, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Macrotech Developers Ltd., (Earlier known as M/s. Lodha Developers Ltd.,) 412, 17G, Vardhan Chambers Cawasji Patel Street, Fort Mumbai - 400001 PAN: AAACL1490J
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Niraj Sheth
Department Represented by	:	Shri Chetan M. Kacha
Date of Hearing	:	15.09.2022
Date of Pronouncement	:	28.10.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 23.11.2021 for the A.Y. 2015-16.

2. Revenue has raised following grounds in its appeal: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in deleting the penalty levied U/s. 271D of the Act since the assessee has not shown the reasonable cause u/s. 273B of the Act for entering into such transactions through journal entries?"

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) is erred in deleting the penalty without giving a finding on transaction to transaction basis in the given case for existence of reasonable cause u/s. 273B which led to the exigency of contravention of provisions of 269SS as the fact of each transaction need independent verification?"

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in merely relying upon the various case laws without examining the cause behind each instance of default which, therefore, rendered the impugned order perverse, and thereby rendered the applicability of any judicial precedent as otiose?"

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in giving the benefit of reasonable cause to a series of transactions, without appreciating that the such benefit is available as an exception rather than a rule, unlawfully granting perpetual legitimacy to transactions otherwise held to be illegal?"

3. At the time of hearing, Ld. AR brought to our notice that similar grounds have been raised by the revenue before the Coordinate Bench in ITA.No. 3047 & 3113/Mum/2019 for the immediately preceding A.Ys.2013-14 and 2014-15. Ld. AR submitted that Coordinate Bench has considered and adjudicated the issue in favour of the assessee and against the revenue. Copy of the order is placed on record. Ld. AR prayed that the same may be adopted for the year under consideration.

4. Ld. DR vehemently argued that the assessee has violated the provisions of section 269SS and they have not demonstrated reasonable cause. Further, he fairly agreed that the issue is covered by the Hon'ble High Court decision.

5. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the immediately preceding Assessment Years i.e., A.Y.s 2013-14 and 2014-15 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

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

"1. Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is justified in deleting the penalty of Rs.1,03,85,936/- u/s 271D holding that there was reasonable cause u/s 273B for entering on transaction to transaction basis in the given case for the existence of reasonable cause u/s 273B which led to the exigency of contravention of provisions of Sections 269SS/ST?"

2. "Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) is justified in holding that the journal entries should enjoy equal immunity on par with account payee cheques and bank drafts?"

3. "Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(a) is justified in merely relying upon the High Court Order in assessee's group case company, Lodha Builders(P) Lid. in ITA.No. Nos.171/172/202/2013/2 18/219 of 2015 vide order dated 06.02.2018 without examining the cause behind each instance

of default which, therefore, rendered the impugned order perverse, and thereby rendered the applicability of any judicial precedents otiose?"

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

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

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

(ii) To give a categorical finding whether the assessee, by undertaking transactions through journal entries, are violating the provisions of sections 269SS and 269T and are liable to penalty under section 271D and 271E in view of the judgment of the Hon'ble Bombay High Court dated 12.6.2012 in the case of Triumph International Finance (India) Ltd. (supra).

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

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

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

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

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

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

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

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

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

(xii) *The judgment of the Hon'ble Bombay High Court dated 12.06.2012 (supra) is categorical that transaction through journal entries constitute contravention of the provisions of sections 269SS and 269T. Then to enquire and find out how not a single penalty has*

been sustained in the Lodha group of cases all these years after 12.06.2012. Is it not surprising that the ITAT did not find a single case fit for penalty in hundreds of cases of the Lodha group decided after 12.06.2012 so far, even in respect of transactions undertaken after 12.6.2012? To examine whether there is a fundamental flaw in the approach of the Hon'ble ITAT.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Reasonable Cause

Without prejudice, even if it is assumed that transactions are in the nature of loans or advances, it is respectfully submitted that no penalty under section 271D can be levied as the Respondent had a

reasonable cause within the meaning of section 273B of the Act. It is submitted that the Hon'ble ITAT has consistently held in cases of group concerns that passing of journal entries in the ordinary course of business constitutes a reasonable cause and, on that ground, has been pleased to confirm deletion of the penalties. Reliance is placed on the following decisions:

- a) Macrotech Developers Limited (Successor to Macrotech Construction Pvt Ltd) (ITA No. 1415/Mum/2019 & 1416/ Mum/ 2018) dated 8th April 2021 (Page 11-70 of the case law compilation)*
- b) Palava Dwellers Pvt Ltd. (ITA No. 3050 & 3051/ Mum/ 2019) dated 11th October 2021 (Page 71-84 of the case law compilation)*
- c) Bellissimo Crown Pvt Ltd. and others (ITA No. 3038 & 3046/ Mum/ 2019 and others) dated 25th November, 2021 (Page 85-108 of the case law compilation)*
- d) M/s Sanathnagar Enterprise Limited & Others [ITA No 3143/ Mum/ 2017 and ITA No 3144/Mum/ 2017 & Others] (Pages 109-191 of the case law compilation)*

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

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

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

It is respectfully submitted that submissions made by the learned standing counsel that the binding precedent ought not to be followed are untenable in view of the well-settled principle that the

decisions of co-ordinate benches are binding on the subsequent benches and judicial discipline requires that they be followed. Reliance is placed on the decision of the Hon'ble Bombay High Court in the case of PCIT vs. JWC Logistics Park (P) Ltd. [2018] 100 taxmann.com 355 (Bom) - SLP dismissed [2018] 100 taxmann.com 356 (SC) - (Copy enclosed). The Respondent prays that the Hon'ble Bench may be pleased to kindly direct the Respondent to further elucidate the matter, if need be.

Prayer

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

10. *Considered the rival submissions and material placed on record, we observed that the issue under consideration is relating to penalty order u/s. 271D of the Act passed by ACIT-7, Mumbai. After considering the submissions of both the counsel, we observed that the Coordinate Bench in assessee's group company i.e. Lodha Builder Pvt. Ltd., held on the issue of similar levy of penalty as under: -*

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

33. We find that there is no finding of AO in the order of the AO during the assessment proceedings that impugned transactions constitute 'unaccounted money and are not bona fide or not genuine. As such, there is no information or material before the AO to suggest or demonstrate the same. In the language of the -Hon'ble High Court, 'neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment'. Admittedly, the transactions by way of journal entries are aimed at the extinguishment of the mutual liabilities between the assessee and the sister concerns of the group and such reasons constitute a reasonable cause.

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

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

of the said provisions, the same needs to be deleted in view of our decision on the legal issue discussed in paras 16 to 22 of the this order. Accordingly, the grounds raised in this regard are allowed."

11. Further, we observed that Ld. Senior counsel specifically submitted that the Hon'ble Bombay High Court decision in the case of CIT v. Triumph International (I) Finance Ltd., in ITA.No. 5745 /2010 dated 17.08.2012 should be considered while decide the issue under consideration. We observe from the record that Hon'ble Bombay High Court in the case of assessee's group case in ITA.No. 171/172/20/2013/218/219 of 2015 order dated 06.02.2018 the Hon'ble Bombay High Court discussed the case of CIT v. Triumph International (I) Finance Ltd., (supra) decision in details and gave the relief in favour of the assessee group, relevant findings are given below: -

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

(e) Mr. Mohanty's submission that the test laid down in Triumph International Finance (supra) will have no application in the present facts in view of the large number of entries in this case as compared to only one entry in the case before this Court. The test of reasonable

cause cannot, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the Assessee for reasonable cause and this finding is not shown to be perverse."

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

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

6. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2013-14 and 2014-15 and also following rule of principle of consistency, we dismiss the grounds raised by the revenue. Grounds raised by the revenue are dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th October, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 28.10.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum