

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1356/Ahd/2019
Assessment Year 2013-14**

Opaque Ceramics Pvt. Ltd. 51/5, 51/4, 51/7, 51/8, GIDC Estate, Motipura, Himmatnagar PAN No: AAACO1727H (Appellant)	Vs	The Addl.CIT, Range-3(1), Ahmedabad (Respondent)
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**Appellant by : Shri Ankit Chokshi, A.R.
Respondent by : Shri Rakesh Jha, Sr.D.R.**

Date of hearing : 22-12-2022
Date of pronouncement : 30-12-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 09.07.2019 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad, confirming the penalty levied u/s. 271D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The solitary ground raised by the assessee is that the Ld. CIT(A) erred in confirming penalty u/s. 271D of the Act and prayed to delete the same.

2.1. The brief facts of the case is that the assessee is a Private Limited Company filed its Return of Income for the Assessment Year 2013-14, declaring a loss of Rs. 3,92,95,118/-. Assessment was completed u/s. 143(3) vide order dated 29.01.2016 determining the loss at Rs. 3,89,22,520/-. During the course of assessment proceedings, the Assessing Officer found that assessee borrowed unsecured loans from related parties. The assessee has accepted a loan of Rs. 4,78,000- in cash on 24.08.2012 which is found to be in contravention to Section 269SS of the Act. Therefore the assessee was issued a show cause notice why not a penalty u/s. 271D is leviable in contravention to Section 269SS of the Act, namely loan availed by cash mode.

2.2. The assessee vide letter dated 16.03.2018 replied as follows:

"..... Your goodself has issued show cause notice no. Addl.CIT/R-3(1)AhdPenalty/OCPL/2017-18 dated 09.03.2018. Vide the said notice your goodself has asked us to show cause why an order imposing penalty us. 271D of the Act should not be made on acceptable of loan of Rs. 4,78,000/- in cash on 24.08.2012 from M/s. Om Ceramics which is in contravention of Section 269SS of the Act.

In this regard, it is humbly submitted that on 24.08.2012 the person from office went to Bank of Baroda, Vastrapur branch to deposit the cash of Rs.4,78,000/- in the bank account of Cm Ceramics having account no, 25360200000026 but, by mistake instead of mentioning above account no., account no, of Opaque Ceramics Pvt. Ltd, I.e. 25360200000020 was mentioned in the cash deposit slip, Due to small mistake of single digit i.e. 6 and 0 cash was credited in the account of Opaque Ceramics Pvt. Ltd. by bank. As soon as we realized the mistake, we transferred the same amount to Om Ceramics very next day i.e. on 25.08.2012 to clear the dues.

From the above, it is clear that the assessee has not accepted any loan in cash from M/s. Om Ceramics. It was just due to the clerical mistake and hence the same cannot be considered as in contravention of Section 269SS of the Income Tax Act, 1961. Further the copy of bank slip, copy of bank statement and the certificate from the bank confirming the said mistake is produced herewith for your verification.

The assessee has referred the case of Mrs. Rupali R. Desai vs. ACIT wherein ITAT Mumbai has relied on the decision given by Mumbai Tribunal I the case of ITO vs. Paramount Builders (ITA No. 1812/Mum/1998, dated 17.01.2001); wherein Mumbai ITAT has mentioned that:

“... Penalty u/s. 271D cannot be levied when the default has been committed due to the clerical error as in this case two sister concerns were carrying on the business from the same premises and due to a clerical error of the staff of the sister concerns, the cash belonging to the sister concern amounting to Rs. 1,50,000/- was deposited in assessee’s account in Abhyuday Co-operative Bank where both the assessee ad the sister concern had the bank accounts ...”

The copy of the same decision is attached herewith relying on the decision of the Tribunal in case of ITO vs. Paramount Builders.

Therefore, your goodself is requested to drop the penalty proceedings initiated u/s. 271D of the Act....”

2.3. The Assessing Officer has not accepted the reply submitted by the assessee and held that M/s. Om Ceramics has confirmed to have advanced a loan of Rs. 4,78,000/- in cash on 24.08.2012. The said amount was credited due to clerical mistake only into its account instead of M/s. Om Ceramics, which is just a cooked story and merely an after-thought to avoid levy of penalty. Though the assessee has submitted the bank slip, copy of bank statement and certificate from the bank, the same are of no use, in view of the loan transaction and thereby levied a penalty of Rs. 4,78,000/- u/s. 271D of the Act.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals). The Ld. CIT(A) confirmed the order of the Assessing Officer holding that the assessee failed to prove that M/s. Om Ceramics was one of its sister concern and operating its business from the same premises. Therefore the levy of penalty was confirmed by Ld. CIT(A).

4. Aggrieved against the Appellate Order, the assessee is in appeal before us. The Ld. Counsel for the assessee submitted that the sum of Rs. 4,78,000/- was deposited by M/s. Om Ceramics, a sister concern of the assessee. However, while filling the bank deposit slip, the staff filled the name of the depositor correctly but the account number was wrongly mentioned as that of the assessee namely 25360200000020 instead of 25360200000026 and produced copy of the bank slip dated 24.08.2012. Immediately on noting this mistake, the next day i.e. on 25.08.2012, the assessee transferred the said amount of Rs. 4,78,000/- vide Cheque No. 2623 to the sister concern M/s. Om Ceramics. The Ld. Counsel produced before us copy of the Certificate issued by Bank of Baroda to show the genuineness of the transaction. The assessee also produced the copy of the Income Tax Returns filed by M/s. Om Ceramics to prove that the sister concern is also functioning in the same premises of the assessee. Further an Affidavit filed by its reply is also produced before us. Thus pleaded that there was a genuine and reasonable cause in depositing the cash in the assessee's account which was being rectified on the next day by issuing cheque in favour of M/s. Om Ceramics. Therefore the

assessee should not be levied of penalty u/s. 271D of the Act. The assessee also further informed that the assessment is also ending with an addition of Rs. 3,72,598/- thereby determining the loss at Rs. 3,89,22,520/-. In the above facts and circumstances, the levy of penalty is unwarranted and the same is liable to be deleted.

5. The Ld. D.R. appearing for the Revenue supported the order of the Lower Authorities and pleaded to confirm the levy of penalty and thereby dismissed the appeal filed by the assessee.

6. Heard rival submissions and perused the materials available on record including Paper Book, Affidavit filed by the assessee. We have given a careful consideration to the facts and circumstances of the case. It is evident that the assessee had received cash amounts, but deposited in its Bank A/c which is in violation of the provisions contained in Section 269SS. But like any other penalty, the operation of Section 271D with reference to the violation of the provisions contained in Section 269SS also is not automatic. Section 273B has provided a statutory fetter to the automatic application of Section 271D. It provides that no penalty shall be imposable on a person under these provisions for any violation, if the person could establish the existence of any "reasonable cause". It is only where a person could not explain any "reasonable cause" for the failure in complying with the provisions of Section 269SS, then the penalty under section 271D would follow. The assessee has explained the circumstances under which the cash deposit, which was in the nature of mistaken bank challan entry was

received by the assessee. However the same was rectified by the assessee on the very next day i.e. on 25.08.2012 by remitting the said amount of Rs. 4,78,000/- by issuing Cheque No. 2623 to M/s. Om Ceramics to prove the genuineness. The assessee also produced the banking challan of cash deposits and certificate from Bank of Baroda, as well as the bank statement and an affidavit filed by assessee's staff. The assessee also produced before us the Income Tax Returns filed by M/s. Om Ceramics which carry the same address that of the assessee herein.

6.1. Taking into overall consideration of the facts in the present case, the assessee has proved a reasonable cause of wrongly coating the bank account number of the sister concern which was rectified the next day itself. Thus it is not a fit case for imposition of penalty u/s. 271D r.w.s. 273B of the Act. We therefore cancel the penalty levied by Rs. 4,78,000/- and allow the grounds of appeal raised by the assessee.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 30-12-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 30/12/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT

4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद