

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No.6325/Del/2017 : Asstt. Year: 2013-14

Planman HR Pvt. Ltd, 48, Community Center, Naryana Industrial Area, New Delhi-110028	Vs	Addl. CIT, Range-20, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFCP0981K		

Assessee by : None

Revenue by : Sh. Sanjay Nargas, Sr. DR

Date of Hearing: 01.12.2022

Date of Pronouncement: 09.02.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-7, New Delhi dated 29.06.2017.

2. The assessee has raised the following grounds of appeal:-

1. On the facts and circumstances of the case the order passed by the CIT(A) is bad both in the eyes of law and on facts.

2. On the facts and .circumstances of the case the learned CIT(A) as erred both on facts and in law in confirming the penalty amounting to Rs. 15,60,000/- levied by the Addl. CIT u/s 271D of the Act.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the penalty of Rs. 15,60,000/- being loan received in cash by treating the same as contravention of provisions of Section 269SS.

4. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the penalty rejecting the contention of the assessee that the transaction being genuine in nature as the payer and the payee were known and the transaction is properly recorded in the books, no penalty u/s 271D is leviable.

5. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the penalty despite the fact that the penalty proceedings are independent proceedings as such mere recommendation from the AO cannot be a mandatory requirement for levying penalty.

6. That the CIT(A) has erred both on facts and in law in confirming the penalty ignoring the fact that the Id. CIT(A) has not given any finding on the merits of the case."

3. During assessment proceedings, the AO noticed that the appellant violated the provisions of section 269SS by accepting loan of Rs. 15,60,000/- in cash from "M/s. Centre for vocation and Entrepreneurship Study". The Add. CIT, Range-20, New Delhi was informed by the AO of the said violation of provisions of Section 269 SS of the Act for taking action u/s 271D of the Act. The Addl. CIT after issue of notice u/s 274 read with Section 271D of the Act to the appellant levied penalty u/s 271D of the Rs. 15,60,000/- vide order dated 11.08.2016.

4. Aggrieved by the penalty order, the assessee has filed appeal before the Id. CIT(A).

5. Before the Id. CIT(A), the assessee furnished written submission which is under:-

- In this regard we submit that our client was in urgent need of funds for making the payment of the salaries for the month of May, 2012 which was already delayed

and "M/s. Centre For Vocational and Entrepreneurship Studies" (IIP) was having cash only with its for giving loan out of fee collected by them in cash from the students.

- Since our client has to make the payment of salary on urgent basis for continuing the operations and it was not having any other option but to take loan whether it is in cash or otherwise. The payer was having only cash with it, therefore, our client had to accept the loan in cash.
- The transactions reported above are genuine as these were recorded in the books of the payee and payer. These transactions have not resulted into any loss to the revenue. The documentary evidences are attached.

6. After considering the submissions of the assessee, the Id. CIT(A) affirmed the order signed by Sh. Sarabjeet Singh, Addl. CIT, Range-20. For the sake of convenience, the operative part of the order is as under:

"The snapshot of the appellant's submission is that loan of Rs. 9,00,000/- in cash on 15.06.2012 and Rs. 6,60,000/- on 16.06.2012 in cash aggregating to Rs. 15,60,000/- from a group concern, M/s. Centre for Vocation and Entrepreneurship Studies (CVES) was taken to make payment of salary on urgent basis for continuing its operations. The Id AR has argued that since the transactions are genuine and the payer and payee are identifiable, therefore, penalty u/s 271D was not imposable with reference to the impugned transactions. It is noted that the appellant has regular transaction with M/s. CVES, a related party during the year. Payment of Rs. 1,06,46,664/- are made for certain services to M/s. CVES and loan of Rs. 1,26,70,000/- is also received from this entity. All the transaction for loan except Rs. 15,60,000/- is through banking channels. The alleged requirement of salary payment necessitating

acceptance of impugned cash loan prima facie is not an acceptable explanation as the said cash is not disbursed by the appellant directly as salary but is deposited in its bank account and then transferred to another bank account from which the alleged urgent salary payment is made. In my view, the explanation offered cannot be treated as a reasonable cause for acceptance of the loan in cash in contravention of the provisions of section 269SS of the Act. It is not a solitary transaction, as the appellant has regular banking transaction with M/s. CVES during the year as is evident from the ledger account of M/s. CVES and NEFT is done routinely. Nothing has been brought on record to highlight the alleged urgency of salary payment, the ostensible reason for accepting the loan in cash. Therefore, the explanation that the said loan is taken in cash to tide over urgent requirement of salary payment is without any basis. The ration of case laws relied upon by the Id. AR do not apply to the facts of the case and are distinguished.

3.3 On consideration of the factual matrix and circumstances of the case, I am of the considered view that the appellant's facts does not constitute reasonable cause and there is no justification for accepting cash loan of Rs. 15,60,000/- from M/s. CVES in contravention of provisions Section 269SS of the Act. I therefore, do not find any merit in the submission of the Id. AR. In the absence of any reasonable cause, penalty of Rs. 15,60,000/- levied u/s 271D of the Act for contravention f the provisions of section 269SS of the Act is justified and is confirmed. These grounds of appeal are rules against the appellant."

7. We have also gone through the paper book containing 49 pages filed by the assessee. The provisions of Section 271D/269SS are as under:

Section 271D

"271D. (1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal

to the amount of the loan or deposit or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

Section 269SS

"269SS. *No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,—*

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit ; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is [twenty] thousand rupees or more :

Provided *that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,—*

(a) Government ;

(b) any banking company, post office savings bank or co-operative bank ;

(c) any corporation established by a Central, State or Provincial Act ;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette :

*[**Provided further** that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.]*

Explanation.—For the purposes of this section,—

[(i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;]

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;

(iii) "loan or deposit" means loan or deposit of money.]”

8. We have also gone through the judgments quoted by the Id. AR in his paper book at page no. 41 to 43. In the instant case, we find that though the assessee argued that the cash loan has been taken for urgent disbursement of the salary, the same fact could not be brought on record that the salary has been indeed paid from the loans taken. The assessee could not prove the fact of payment of salary subsequent to the receipt of loan and hence, we decline to interfere with the order of the Id. CIT(A).

9. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 09/02/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 09/02/2023

Subodh Kumar/AK, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR