

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**IT(SS)A No. 997 & 998/Ind/2019**  
**Assessment Year: 2014-15**

DCIT, Central-2 Bhopal	<b>बनम</b> Vs.	Shri Raju Perumal, Siddhartha Mount View Villas, Chuna Bhatti, Bhopal
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: ABZPP 3789 P</b>		
Revenue by	Shri P.K. Mishra, CIT-DR	
Respondent by	Shri S.S. Deshpande, AR	
Date of Hearing	30.11.2022 / 13.03.2023	
Date of Pronouncement	31.03.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, AM:**

Feeling aggrieved by a consolidated appeal-order dated 28.03.2018 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**“Ld. CIT(A)”**], which in turn arises out of a consolidated penalty-order dated 31.05.2017 passed by learned Addl. CIT, Central Range, Bhopal [**“Ld. AO”**] u/s 271D & 271E of Income-tax Act, 1961 [**“the Act”**], the revenue has filed these appeals concerning Assessment-Year [**“AY”**] 20014-15 on following grounds:

***ITA No.997/Ind/2019:***

*“On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied u/s 271D of Rs. 90,00,000/- out of total penalty levied u/s 271D of Rs. 94,00,000/- by the Addl. CIT (Central), Range, Bhopal for violation of section 269SS of the Income Tax Act, 1961.”*

***ITA No.998/Ind/2019:***

*“On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied u/s 271E of Rs. 90,00,000/- out of total penalty levied u/s 271E of Rs. 94,00,000/- by the Addl. CIT (Central), Range, Bhopal for violation of section 269T of the Income Tax Act, 1961.”*

2. Both of these appeals emanate from a common penalty-order and common order of first-appellate authority; hence they are taken together for analogous adjudication.

3. Heard the Ld. Representatives of both sides at length and case records perused.

4. Briefly stated the facts are such that the assessee-individual is earning income mainly from rent, transport contractor and share from partnership firms which are engaged in the business of builders and developers. A search u/s 132 was conducted on assessee and its associated concerns on 29.01.2014. During the course of search-proceeding, the authorities seized “Page No. 67 to 83, 156 and 157 of LPS-1” which contained some hand-written papers, some copies of receipts showing each receipt at Rs. 9,58,335/- and copies of 10 post-dated cancelled cheques of the same amounts issued by assessee. Ld. AO has scanned these papers on Page No. 2 to 4 of the penalty-order. During post-search/assessment enquiries, the assessee stated in statements u/s 131 recorded on 15.07.2014 that the loose papers have not been written by him but the receipts and cheques were signed by him. Based on these facts, the Ld. AO framed a view that the assessee must have received a loan of Rs. 90,00,000/- in cash and also repaid the same in cash. Thereafter, when the Ld. AO show-caused the assessee to explain the transactions reflected by those documents, the assessee submitted reply as under:

*“The assessee is a partner of the partnership firm M/s Signature Infrastructure. The assessee made an excess withdrawal of capital of Rs. 90,00,000/- on 07.08.2013. On coming to know about such unilateral and unauthorized withdrawal, the other partners of the firm raised an objection*

*and asked the assessee to immediately refund the excess withdrawn capital. As the assessee was not in a position to refund such amount immediately, he was made to sign receipts/undertaking of the amounts received and was compelled to give post-dated cheques to the firm. The assessee thereafter within that month itself refunded the excess withdrawals. Thus, the amount received by the assessee was not his income. Further the amount refunded was out of the cash withdrawn by him from the firm and consequently the source of such repayment is also explained. It may be mentioned that the assessment of the said partnership firm is simultaneously being done by you u/s 153A and the above facts can be verified by you from their records. However, in case you are not satisfied with the submission and desire that the assessee furnish some additional evidence, the same may kindly be communicated to the assessee to enable him to do the needful.”*

However, the Ld. AO rejected assessee's submission and concluded that the assessee must have taken a loan of Rs. 90,00,000/- in cash and repaid the same in cash alongwith interest of Rs. 5,38,350/- [being the difference of Rs. 90,00,000/- (actual receipt) and Rs. 95,83,350/- (aggregate amount of 10 cancelled cheques)] from unexplained sources. Accordingly, Ld. AO made an addition of Rs. 5,38,350/- to the taxable income of assessee on account of unexplained expenditure and at the same time made a case of penalty u/s 271D / 271E for violation of section 269SS / 269T.

5. Thereafter, the penalty proceeding u/s 271D and 271E were initiated vide show-cause notice dated 15.03.2017. In response to show-cause notice, the assessee filed a detailed reply dated 03.04.2017 which is reproduced by Ld. AO in Para No. 4.1 of the penalty-order. The contention of assessee before Ld. AO was on the same line of reasoning i.e. he had not taken/repaid any loan in cash; he had simply made unauthorized collection of Rs. 90,00,000/- relatable to his partnership firm M/s Signature Infrastructure and thereby made unauthorized withdrawals and when other partners came to know of this, they insisted to provide security which the assessee fulfilled by submitting those promissory notes/receipts and cheques. However, the Ld. AO again disbelieved such submission of assessee vide Para No. 4.2 of the penalty-order and finally imposed penalty of Rs. 90,00,000/- u/s 271D for violation of section 269SS on account of

taking of loan in cash and Rs. 90,00,000/- u/s 271E for violation of section 269T on account of repayment of loan in cash.

6. Before us, Ld. DR strongly argued that during search proceeding, various documents in the form of loose papers, receipts and cancelled cheques were seized by authorities from which it was deduced that the assessee had taken a loan of Rs. 90 lakh in cash. Ld. DR submitted that the factum of receipt of Rs. 90 lakh is undisputably accepted by assessee though the assessee has projected an unbelievable claim of unauthorized collection-cum-withdrawal of moneys belonging to his partnership firm. Referring to Para No. 4.2 to 7.1 of the penalty-order, Ld. DR submitted that the Ld. AO has pointed out several infirmities in the claim of assessee. Ld. DR submitted that the CIT(A) has overlooked those infirmities and merely accepted the version of arguments pleaded by assessee before him. Ld. DR submitted that the CIT(A) has wrongly deleted the penalties; his action must be reversed and penalties must be upheld.

7. Per contra, the Ld. AR strongly defended the order of first appellate authority. Ld. AR submitted that from very beginning, the assessee had been claiming that he had made unauthorized collection-cum-withdrawals relating to his partnership firm and when other partners found such state of affairs, they forced the assessee to repay and also furnish security. Ld. AR submitted that other partners of M/s Signature Infrastructure, namely Shri Raj Kumar Khilwani and Shri Vipin Chauhan have also filed a confirmatory letter, jointly signed by them, to the AO which is placed at Page No. 125 of the Paper-Book which confirms such submission of assessee. Ld. AR submitted that the AO has merely disbelieved the submission of assessee and attempted to find infirmities therein rather than understanding the real-true state of affairs submitted by assessee. Drawing our attention to the order of first-appellate authority, Ld. AR submitted that the CIT(A) has given a proper and reasoned consideration to all submissions of assessee, factual as well as legal, and thereafter deleted the penalties. Ld. AR also referred to

Page No. 82 to 120 of the Paper-Book where a copy of the assessment-order of partnership firm M/s Signature Infrastructure is filed. Ld. AR submitted that the firm has offered undisclosed income relatable to unaccounted cash receipts (Page No. 33 and 37 of the assessment-order / Page No. 115 and 119 of the Paper-Book), part of which were the unauthorized collections made by assessee. Thus, according to Ld. AR, the firm has already paid tax with respect to the unauthorized collections made by assessee. Having said so, the Ld. AR submitted that unauthorized collections made by assessee relatable to partnership firm; retaining the proceeds thereof and repaying subsequently to the firm are unilateral actions of the assessee and in any case cannot be said to be taking/repaying of loans; therefore section 269SS / 269T are not attracted at all. Hence, according to Ld. AR, the Ld. CIT(A) has rightly and after a due consideration deleted the penalties imposed by AO; his order must be preserved.

8. We have considered rival contentions and perused the material held on record. At first, we find that the Ld. CIT(A) has given a detailed finding in his order as under:

**“Conclusion:**

***On careful consideration of submission, loose paper and findings of Ld AO, I find a significant force in the argument of the appellant and hold that penalty is not leviable in this case in view of following facts (summarized in brief) and legal position:-***

***(i) It is seen from perusal of these loose papers/signed cheques that name of person from whom the alleged loan/deposit was accepted is not discernible. In spite of that Addl. CIT has imposed penalty disregarding this fact and by holding that the assessee has received unsecured loan from 'some person'. No identity of the person has been brought on record. It is a matter of common sense that to have a loan/deposit transaction one must have at least two persons involved one payer and another payee. Here, name of payer is missing. On the other hand assessee had submitted the name of person from whom the amount was received and paid back and also explained the circumstances under which impugned amount was received and such seized papers were prepared. In support, appellant has filed copy of memorandum cash book and confirmation letters of partners corroborating the contention. In view of the facts and evidences filed.***

**Ld. AO erred in rejecting the plea of appellant as 'an afterthought giving total disregard to other surrounding circumstances, which is in my view is not proper and justified.**

**(ii) The source of cash withdrawn by appellant as partner from firm M/s Signature Infrastructure has been properly explained by way undisclosed income of Rs. 67,00,000/- in A.Y 2014-15 and Rs, 40,70,000/- in A.Y 2012-13. It has been explained that memorandum cash book showing impunged disclosure and unauthorized withdrawals by assessee are duly filed before AO in case of M/s Signature Infrastructure. Ld AO has not pointed out any deficiency in said chart/memorandum cash book during penalty proceedings as well.**

**(iii) Ld AO has erred in interpreting on the basis of pg 74 of seized material having details of loan receipt. On verification of seized material it is seen that same is blank and appellant has explained that his signature were obtained by other partners to give a formal color to unauthorized withdrawals made by the appellant from firm and get the transactions a safety cover of sec 138 of Negotiable Instrument Act. Therefore, interpretation of Addl CIT of seized page 74 is not conclusive to infer that impunged transaction amounting to Rs. 90 lacs were of loan between assessee and some other unknown and unidentified person. Thus, interpretation of Ld. Addl. CIT is devoid of any merit because there is no evidence found to substantiate that assessee has received cash loan from any outsider party.**

**(iv) The fact of unauthorized withdrawal (treated by AO as loan transaction) of Rs. 90 lacs have been duly confirmed by other partners, Ld AO has not controverted their arguments by cross- examining them. It is settled law that contents of affidavit cannot be disbelieved without controverting its contents by examining the deponents.**

**(v) It has been explained that the assessee without the knowledge of the other partners collected some money on behalf of the said partnership firm and along with some old funds of the firm lying with him, retained such excess collection with him without any authority towards withdrawals of his capital in the firm. As the transaction was done in an unauthorized and illegal manner without the knowledge of the other partners the same could not be recorded in the books of accounts of the partnership firm. Subsequently the said irregularity came to the knowledge of the other partners and they demanded immediate repayment of the said amount which the assessee could not repay at that time. Under the circumstances the partners forced the assessee to sign a receipt accepting the unauthorized withdrawal as a loan receipt and also took post dated cheques to ensure recovery of the funds in a phased manner. The amount so withdrawn was subsequently repaid by the assessee to the partnership firm and the cheques issued were got cancelled.**

**The factum that the assessee had not taken any loan is also obvious from the fact that the assessee had not been found to have made any investment in the relevant period for which he may have required to take a loan and further its repayment in that month itself will also signify that the amount was retained by him and was not invested anywhere. No prudent person will take any interest bearing loan without any requirement of fund and thus the only logical conclusion that can be drawn from the facts is that the assessee has not taken any loan. There is no concrete evidence to refute this presumption.**

**(vi) It is settled legal position that no penalty is leviable on any unilateral transaction as held in the case of Chandra cement Ltd (supra). Having decided that as there was no lender/depositor in this case and assessee has made unauthorized withdrawals from the unexplained cash of firm, there was no loan transaction which need bilateral act-penalty not leviable on unilateral act. In absence of any direct evidence to substantiate that the assessee has infact accepted/paid the loan in violation of sec 269SS/T. penalty cannot be levied as held in the case of Shri Madanlal N Singalkar v/s Addl CIT (supra).**

**(vii) It has been held by various High courts, Tribunals and Supreme Court (CIT v/s RM Chidambaram) that transactions between firm and partner do not constitute any loan or deposit as relationship is not of a debtor and creditor and hence such transactions are not covered under the purview of sec 269SS/T of the Act these case laws are:-**

- **CIT v Sivakumar (2013) 262 CTR 109(Mad)**
- **CIT V Lokhpat Film Exchange(Cinema) 212 CTR 371(Rajasthan)**
- **DCIT V Chetan M Kakaria (2014) 151 ITD 658(Mum)**
- **Addl Cit V Basant Kesharwani & Co (2011) 17 ITJ 299(Indore)**

**(viii) As explained by Hon'ble Supreme Court in case of ADIT v/s Kum A.B Shanti (supra) and CBDT circular No 387 dated 06.07.1984, a purposive interpretation need to be given to the said provision of sec 269SS/T of the Act. As discussed already facts and circumstances of this case makes it clear that appellant is not liable for penalty in view of the purpose for which this provision was brought into statute book.**

**(ix) In this case. M/s Signature Infrastructure (wherein assessee is a partner) has disclosed the very same amount as undisclosed income of the firm out of which impunged cash was withdrawn, so the same amount should not have been treated as loan. It has been held in the case of Diwan Enterprises v/s CIT 246 ITR 571 (Del) that amount having ceased to be a loan because disclosed as income, the very foundation for imitating penalty proceedings for levying penalty is lost.**

**[x] I find significant force in the contention of the appellant that assessee could be under genuine impression that advancing of money or withdrawal from firm by a partner is not a transfer from one**

**person to another and hence makes it a genuine case of "reasonable cause" for which assessee cannot be visited with penalty u/s 271D/E of the Act. In short, case is covered under the provision of sec 2738 of the Act.**

**In view of above discussion and considering the facts and in the circumstances of the case and relying upon the various judgments it is held that the amount of Rs. 90,00,000/- was not a loan or deposit in the hands of the appellant and the LD. Addl. CIT was not justified in levying penalty u/s 2710 for acceptance and 271E for repayment in respect of impugned transaction and the penalty levied of Rs. 90,00,000/- u/s 271D & 271E is directed to be deleted. Ground #2 of both the appeals is allowed."**

9. On a careful consideration, we note that the assessee has categorically claimed all through before the authorities that he had made unauthorized collections relatable to his partnership firm M/s Signature Infrastructure and this fact is also confirmed by other partners of the firm in a joint letter, copy of which is placed in the Paper-Book. Para No. 2 of the letter clearly vouches this fact. Further Para No. 4 of the letter also confirms that the partners of firm prepared the papers so that an acknowledgement could be taken from assessee and also obtained post-dated cheques as security to ensure the recovery of amount. We also find that it is not the case of Ld. AO that those other partners were summoned / cross-examined which has led to discovery of any infirmity in their joint letter. We further observe that the Ld. CIT(A) has given a clear finding that the source of cash withdrawal by assessee as partner from firm M/s Signature Infrastructure has been properly explained by way of undisclosed income of Rs. 67,00,000/- in A.Y 2014-15 and Rs. 40,70,000/- in A.Y 2012-13 (in the hands of firm) and that the memorandum cash-book showing impugned disclosure and unauthorized withdrawals by assessee are duly filed before AO in case of M/s Signature Infrastructure wherein the Ld. AO has not pointed out any deficiency. We further observe that the Ld. AO has simply disbelieved all these factual submissions and made his own interpretation that the assessee must have taken/repaid loan in cash. Thus, on facts, we find that the assessee has given sufficient evidences to prove that the receipt of Rs. 90,00,000/- was relatable to unauthorized collections made by assessee. On

legal fronts of the applicability of section 269SS / 269T, we observe that section 269SS is applicable where a person takes or accepts a “loan” or “deposit” and section 269T applies where a person make repayment of such “loan” or “deposit”. In the present case, however, the assessee has not taken/repaid any “loan” or “deposit”; what the assessee has done is to make an authorized collection-cum-withdrawal from his partnership firm. Therefore, section 269SS and 269T do not have any application as rightly observed by Ld. CIT(A) too.

10. In view of above discussion, we are of the considered view that the present case does not involve any violation of section 269SS / 269T and therefore the penalties imposed upon assessee u/s 271D / 271E were rightly deleted by Ld. CIT(A). We do not find any infirmity or fallacy in the action of Ld. CIT(A). Therefore, we uphold his action.

**11. Resultantly, these appeals of revenue are dismissed.**

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 31/03/2023.</i>
<i>Order pronounced in the open court on ...../...../2023.</i>

Sd/-

(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 31.03.2023

Patel/Sr. PS

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*

1.	Date of taking dictation	17.3.23
2.	Date of typing & draft order placed before the Dictating Member	17.3.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	17.3.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	