

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 285/Rjt/2022  
Assessment Year 2016-17**

M/s. Love Shoppers Ltd. Ahmedabad PAN: AAACL5963A (Appellant)	Vs	The DCIT, Circle-2(1)(2), Ahmedabad (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 09-05-2023  
Date of pronouncement : 16-05-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2016-17, arises from order of the National Faceless Appeal Centre (NFAC), Delhi dated 26-08-2021, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:

*“1 The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2. The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred as to the "CIT(A)"] erred on facts as also in law in confirming levy of penalty u/s 271D of the Act at Rs. 13,25,000/- on the ground of alleged contravention of provision of section 269SS of the Act. The penalty confirmed u/s 271D of the Act may kindly be deleted.*

*4. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*  
*Total Tax Effect 13,25,000/-”*

3. In the instant case, at the outset, we observe that there is a delay of 396 days in filing of the present appeal by the assessee. Before us, the counsel for the assessee submitted that delay in filing of the present appeal by 396 days was owing to a mistake by the staff of the Director of the company. The counsel for the assessee submitted that the Director of the company instructed the staff to hand over papers to the counsel who was supposed to file the appeal before ITAT, but inadvertently, the staff did not hand over the papers to the counsel. The counsel for the assessee submitted that the delay in filing of the present appeal was caused purely due to inadvertent mistake committed by the staff and he also filed an Affidavit in support of the above contention. In response, the Ld. DR also did not object to the delay in filing of the present appeal being condoned, looking into the facts of the instant case. Accordingly, looking at the facts of the instant case, we are hereby condoning the delay in filing of the present appeal.

4. The brief facts of the case are that during the course of assessment proceedings, the assessing officer observed that the assessee company had received a loan of ₹ 13,25,000/- in cash from one of its Director, Mr Kamal Sonwami and the aforesaid loan was also repaid by the assessee company back to the Director during the year under consideration itself, in cash. The assessing officer initiated proceedings under section 271D of the Act for violation of the provisions of section 269SS of the Act.

5. In the 271D proceedings, the assessing officer observed that cash loan has been taken by the assessee from its Director and the same has been entered as loan in the books of accounts of the assessee and the same was pointed out by the Auditors in the audit report. He further held that the case laws relied upon by the assessee in support of its contention that no penalty may be levied under section 271D are distinguishable on facts. Further, during the course of penalty proceedings, the assessee submitted that the amount of loan was taken in order to meet some emergency payments during the year under consideration, and hence there existed reasonable circumstances as defined under section 273B of the Act for non-levy of penalty u/s 271D of the Act. However, the assessing officer held that the assessee has not been able to bring forth to any such emergency circumstances, which would necessitate receipt of amounts in cash from its Director in violation of section 269SS of the Act.

6. The assessee filed appeal before Ld. CIT(Appeals), who dismissed the appeal of the assessee with the following observations:

**“5.3 DECISION:** *The order u/s 271 D, the statement of facts, and the reply made by the appellant have been considered.*

5.4 *In this case, the appellant company received the unsecured loan of Rs. 13,25,000/- in cash from one of its directors. The same was repaid in cash on different dates to the said director during the FY 2015-16. The appellant has contended that the appellant company and the director are closely related party and the genuineness of the transaction is also not under dispute. The appellant placed reliance on the following decisions:*

i) *Gujarat High Court decision in the case of CIT vs Shree Ambica Flour Mills 6 DTR 169 (Guj).*

ii) *CIT, Faridabad, vs Sunil Kumar Goel (ITA No. 177 & 178 of 2009 dated 03/03/2009. P&H High Court)*

iii) *Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs State of Orissa (1970) AIR 253*

5.5 *The decision of the Hon'ble Gujarat High Court decision in the case of CIT vs Shree Ambica Flour Mills 6 DTR 169 (Guj) has already been discussed by the Range Head in the impugned order at para 5.1 and I agree with his findings.*

5.6 *Further, in the case of CIT, Faridabad, vs Sunil Kumar Goel, it is mentioned that there should be a reasonable cause for accepting payment in cash rather than account payee cheque but in the present case the facts are not the same.*

5.7 *Further, the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa deals with mere technicality of an offense. The Hon'ble Apex Court observed that where the offence is merely technically, even if the minimum penalty is prescribed, the authority should not impose penalty. However, in the instant case, cash was accepted from the director 4 times, so the appellant is in habit of showing disregard to the provisions so it cannot be said to be a mere technicality. The appellant has to show reasonable cause in which the appellant has failed i.e. the appellant has not been able to show reasonable cause. In view the above, the penalty imposed is confirmed, accordingly Ground No. 1 of the appeal is dismissed.”*

7. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the levy of penalty under section 271D of the Act. The counsel for the assessee submitted that the assessee company had received a loan from its Director, which was also repaid back to the Director during the impugned year under consideration itself. Further, it was submitted that a perusal of the books of the assessee would reveal that the

amount received from the Director by the assessee company was utilised for meeting the regular business expenses of the company. He also drew attention to the contra account of the Director at page 90 of the paper book. The counsel for the assessee further submitted that during the course of assessment proceedings, all the above payments have been accepted as genuine and no additions have been made by the assessing officer during the course of assessment proceedings, in respect of any of the aforesaid transactions. Accordingly, since all the transactions have been accepted as genuine in the instant set of facts by the assessing officer, no penalty may be imposed under section 271D of the Act, looking at the facts of the instant case.

8. In response, the Ld. DR submitted that the decisions on which reliance has been placed by the assessee are distinguishable on facts. The case of Shri Ambica Flour Mills 6 DTR 169 (Gujarat) is distinguishable on facts since in this case one of the sister concerns of the assessee had directly made payment on behalf of the assessee company, and therefore, the High Court gave relief to the assessee by looking into the particular facts of the case, which are clearly distinguishable from the instant facts of the assessee's case. Further, the Ld. DR submitted that in instant facts, the assessee has not been able to point out any imminent circumstances, which necessitated receipt of payment in cash, during the year under consideration. Accordingly, the Ld. DR submitted that the order of Ld. CIT(Appeals) may kindly be upheld.

9. We have heard the rival contentions and perused the material on record. In the instant facts, while we are in agreement with the counsel for the assessee that genuineness of payments have not been doubted in the instant facts, however, we are unable to agree with the contention that simply because payments have been accepted as genuine/genuineness of the transaction has not been doubted in the assessment order, this itself can be a ground alone to vacate levy of penalty decision 271D of the Act. In our considered view, levy of penalty under section 271D is independent of any finding with respect of genuineness of the transaction. However, we do agree with the proposition that if the assessee is able to prove certain imminent circumstances, which necessitated receipt of money in cash by the assessee company, then, looking into the facts of the case, levy of penalty under section 271D may be considered to be deleted. However, in the instant facts, the assessee has not been able to demonstrate any emergency/imminent circumstances which necessitated the assessee company to receive aforesaid amount in cash from its Director. This aspect has been dealt in detail by the assessing officer during the course of 271D proceedings, wherein, he pointed out that the assessee company accepted cash from the Director on four occasions and it is seen that from the bank statement of the assessee company, there was sufficient cash balance in the bank accounts of the assessee on the date of acceptance of cash loan. Further, since the cash was accepted by the assessee company on working days, the argument of the assessee company that these loans were taken for emergency payments cannot be accepted. Accordingly, looking into instant facts, we are of the considered view that acceptance of cash by the assessee company was not necessitated by any emergency/imminent circumstances.

In the recent case of **Vasan Healthcare (P.) Ltd. 125 taxmann.com 266 (SC)**, the Hon'ble Supreme Court dismissed SLP against High Court ruling that where director of assessee-company obtained cash in excess of Rs. 20,000 as loan from a financier **and deposited same in cash in bank account of company**, merely because director took cash loans from financier and deposited it in current account of assessee-company on very same day **and assessee utilized it to pay salaries, rent and EMI commitments, same could not be a ground to be taken as a mitigating factor to escape from rigour of levy of penalty under section 271D**. In the case of **Samora Hotels (P.) Ltd. 19 taxmann.com 285 (Delhi)**, the Hon'ble High Court held that expression 'any other person' in section 269SS does not exclude directors or members of company which has received or accepted loans or deposits. In the case of **Chandra Cement Ltd. 74 taxmann.com 75 (Rajasthan)**, where assessee-company, engaged in setting up of cement plant, raised unsecured loan from Managing Director in cash in excess of Rs. 20,000, mere fact that said amount was utilised for payment of constructional activities directly would not alter character of deposits. In the case of **Deepak Sales & Properties (P.) Ltd. 95 taxmann.com 166 (Mumbai - Trib.) (SB)**, the ITAT Special Bench held that where reasonable cause for receiving loans in cash was not proved by assessee, Commissioner(Appeals) rightly upheld levy of penalty under section 271D of the Act. In the case of **P. Baskar v. CIT 21 taxmann.com 78 (Madras)**, the Hon'ble High Court held that where there was no material to show that in fact there was a real exigency that compelled assessee to go for cash loan, penalty under section 271D was rightly levied. In the case of **K.V. George v. CIT 42 taxmann.com 261 (Kerala)**, the Hon'ble High Court held that

where reasonable cause for receiving loan or deposit in cash was not proved by assessee, levy of penalty under section 271D was to be upheld. Accordingly, in view of the facts of the instant case, we are of the considered view that there is no infirmity in the order of Ld. CIT(Appeals) while confirming the levy of penalty under section 271D of the Act looking into the instant facts, so as to call for any interference.

10. In result, appeal of the assessee is dismissed.

Order pronounced in the open court on 16-05-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 16/05/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**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,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot