

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T. A. Nos. 745 & 746/Asr/2017**  
Assessment Year: 2011-12

Sh. Balbir Singh,  
M/s Jai Deep Gift Centre,  
Taptej Singh Market, Moga  
[PAN: ASRPS 7279J]  
**(Appellant)**

**V.** Addl. Commissioner of Income  
Tax, Moga Range, Moga  
**(Respondent)**

Appellant by : Sh. P. N. Arora, Adv.

Respondent by : Sh. Radhey Shyam Jaiswal, Sr. DR

Date of Hearing : 06.07.2023  
Date of Pronouncement : 18.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

Both the appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana dated 03.10.2017 & 14.08.2017 in respect of Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal in ITA No. 745/Asr/2017:

- “1. That the order of Addl. Commissioner of Income Tax, passed under 271E r/w section 269TT is illegal, unjust and void ab initio and the Learned Commissioner of Income Tax (Appeals)-3, has grievously erred in confirming the penalty levied u/s 27 IE of the Act of Rs.20,00,000/-.
2. The order of the Addl. Commissioner of Income Tax, is erroneous on the facts and in the law and Upholding the same by CIT(Appeal)-3, Ludhiana is not justified.
3. That both the authorities has acted arbitrarily without examining the evidences on record and without having rebutting the various judgments relied upon by the assessee.
4. Any other ground of appeal, which may be urged at appeal.”

3. The appellant raised the following Grounds of appeal in ITA No. 746/Asr/2017:

- “1. That the order of Addl. Commissioner of Income Tax, passed under 271D r/w section 269SS is illegal, unjust and void ab initio and the Learned Commissioner of Income Tax (Appeals)-3, has grievously erred in confirming the penalty levied u/s 27 ID of the Act of Rs.20,00,000/-.
2. The order of the Addl. Commissioner of Income Tax, is erroneous on the facts and in the law and Upholding the same by CIT(Appeal)-3, Ludhiana is not justified.
3. That both the authorities has acted arbitrarily without examining the evidences on record and without having rebutting the various judgments relied upon by the assessee.

4. *Any other ground of appeal, which may be urged at the time of hearing of the appeal.”*

4. Since, the appellant has challenged the confirmation of penalty u/s 271D and 271E on identical facts in respect of the same transaction with same party for the same assessment year 2011-12, hence both the appeals were heard together and decided by this consolidated order.

5. The brief facts of the case as per record are taken from ITA No. 746/Asr/2017 for discussion that assessment in this case has been completed u/s 143(3) of the Income Tax Act, 1961 at an income of Rs. 2,34,256/- against the returned income of Rs. 1,54,550/-. It was observed by the Assessing Officer (In short “the AO”) that the appellant had accepted and repaid a loans of Rs.20 lac in cash from M/s Jaideep Forex Pvt. Ltd. The AO referred this issue to the Addl. Commissioner of Income Tax, Moga Range, Moga for initiation of penalty proceedings u/s 271D and 271E read with section 269SS and 269TT of the Income Tax Act, 1961 respectively as the appellant has violated the provisions of section 269SS and 269TT of the Income Tax Act, 1961. From the assessment order, it is observed that the appellant had received and paid a loan of Rs. 20 lakh in cash from M/s Jaideep Forex Pvt. Ltd in respect of the assessment year under consideration. The assessing officer referred this issue to the Additional

Commissioner of Income Tax, Moga Range, Moga for initiation of penalty proceedings u/s 271D read with section 269SS of the Income Tax Act, 1961 as the appellant has violated the provisions of section 269SS of the Income Tax Act, 1961 who being not satisfied with the reply of the appellant levied the above penalties by observing that the appellant had received of Rs. 20 lakh in cash from M/s Jaideep Forex Pvt. Ltd. in which he has been one of the director, having 25% of share levied the Penalty u/s 269SS and 269TT of the Income Tax Act, 1961

6. The assessee being aggrieved with the Penalty Order, went in appeal before the Ld. CIT(A) who has dismissed the appeal of the assessee by observing as under:

“In the present case also the transaction of Rs. 20.00 has been proved to be genuine to the satisfaction of AO and has not been doubted. There is no loss to the revenue and the transaction has been made in cash in such a circumstances, where the assessee was asked by educational Consultants to deposit Rs. 20.00 Lakh in his own account to show his financial position to support extension in visa of his son's who was studying in Australia. Further the assessee was under bonafide belief that such cash transaction shall not in contravention of any provisions of income tax Act, as he has to refund the amount into the current account of the company in few clays. There was no malafied intention of the assessee to conceal and black money or to evade any tax or otherwise

In these circumstances there is reasonable cause as required u/s 273B ie To show His financial position to support; extension in visa of his son's who was studying in Australia as per the advice of educational consultant and the ignorance of law relating to the provisions of section 269SS and 269TT. The assessee has duly explained in His plea to the penalty proceedings the circumstances and which are reasonable and genuineness of the transaction, of Rs. 20.00 Lacs. In these circumstances levy of penalty u/s 271D is not Justified.

The Ignorance of law is a reasonable cause as required u/s 273B to justify deletion of a penalty as held by Hon'ble Supreme Court in the case of Moti Lal Padampat Sugar Mills Co. Ltd. vs. State of UP (1979) 118 ITR 326 (SC) wherein it was held, that there is no presumption in this country that every person knows the law and it would be contrary to common sense and reason if it were so. It was also stated that "it is impossible to know all the statutory law, and not very possible to know all the common law". Further, the Hon'ble Madras Court in the case of in the case of CIT vs. KPVS Mohammad Rowther & Co. 232 ITR 176 (Mad) held that ignorance of law can be a reasonable cause for the failure and deletion of penalty was justified.

Where the Ld. AO during Assessment proceedings already made additions of such Loan (as held by AO) as deemed dividend u/s 2(22e), it is not justified to invoke provisions of section 269SS and 269TT of the Act.

The assessee is an ordinary person having limited sources of income. During AY 2008-09 he with his three family members float a private limited company for the forex business with the capita of Rs. 30.00 Lacs divided in to four family members. He is not educated enough to understand the complex provisions of companies Act and Income Tax. Act. For a layman like assessee he with his family own Rs. 30.00 Lacs as capital and he can use such capital, for the purpose of business or personal use as per need

irrespective of the fact that the company is separate legal entity from the promoters/directors and there are certain provisions and procedure to be followed in companies Act and Income Tax Act. In a logical sense also the assessee withdrawn his own family capital for temporary use and with his act there is no loss to revenue and there is no malafied intention of the assessee in doing so.

3.2 At the time of appellate proceeding notice for hearing was issued on 21.10.2015 fixing the case for hearing on 04.11.2015. The notice was issued at the address of Sh. Balbir Singh M/s Jaideep Gift Centre, Taptej Singh Market, Moga. In response to this notice an adjournment application from the Ld. AR was received and the case was fixed for 11.01.2016. But on the given date no one has attended appeal proceedings and no compliance was made by the appellant or AR. The fresh notice for hearing was issued on 27.11.2015 and case fixed for hearing on 23.12.2015. But on the given date case was again non-attended. Further, notice for hearing was issued on 09.06.2016 and case fixed for hearing on 05.07.2016. No one has attended appeal hearing again case was treated as non attended. In between of the appellate proceeding the Ld. Counsel of the appellant filed written submissions vide letter dated 21.10.2016 which are placed on record. The case was fixed for hearing on 18.11.2016 but that day due to training program the case adjourned to But again no one has attended case hearing. Although various opportunities were given to the appellant on various date i.e. 15.12.2016, 16.01.2017 13.02.2017, 13.07.2017 and 08.08.2017, no one has attended appeal proceedings and no compliance was made by the appellant or AR. Therefore, It is clear that the appellant has don't want to attend appeal proceedings. In these circumstances, the matter is being decided ex-parte. The maxim ***'vigilantibus non- dermientibus jura subvenunt'*** i.e. ***"the law assist those who are vigilant and not those who sleep over their rights"*** is applicable in this case.

3.3 Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and housing Ltd., after following the decision of **Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it.**

Although the appellant has not attended the proceedings except once the authorized representative of the appellant filed submission. Thereafter the appellant has not attended the proceedings at all. However considering the facts

of the case and the written submission filed by the appellant the appeal of the appellant is hereby decided on merit of the case also.

3.4 I have gone through the facts of the case. I have also gone through the penalty order u/s 271D read with section 269SS of the Income Tax Act, 1961. I have also carefully considered the submission filed by the appellant during the course of assessment proceedings and appellate proceeding as well. It is observed that the assessing officer during the course of assessment proceedings of the case observed that the appellant had debited a loan of Rs. 20 lakh in cash from M/s Jaideep Forex Pvt. Ltd.. The assessing officer referred this issue to the Additional Commissioner of Income Tax, Moga Range, Moga for initiation of penalty proceedings u/s 271D read with section 269SS of the Income Tax Act, 1961 as the appellant has violated the provisions of section 269SS of the Income Tax Act, 1961 alongwith books of account of M/s Jaideep Forex Pvt. Ltd.

3.4 The Additional Commissioner of Income Tax, Moga observed that the appellant had received of Rs. 20 lakh in cash from M/s Jaideep Forex Pvt. Ltd. In which he has been one of the director, having 25% of share. The appellant at the time of penalty proceedings explained the reason of the deposit of cash was to show his financial position to the immigration authorities for the purpose of extension of study Visa of his son who had gone to Australia two years ago and study Visa. I have carefully considered the submission filed by the appellant during the course of appellate proceedings and the reasoning's given by him for accepting cash loan from M/s Jaideep Forex Pvt. Ltd. However, I am not inclined to agree with the contention of the appellant as the explanation furnished by the appellant is not absolve the appellant from the contention of section 269SS. The appellant could not explain any reasonable cause to accept the cash loan of 20 lakh during the assessment from M/s Jaideep Forex private limited. Hence, the appellant violated the provisions of section 269SS of the Income Tax Act, 1961. I have also gone through the case laws relied upon by the appellant during the course of appellate proceedings as well as the assessment proceedings however I find that on facts of the case of the appellant is different from the cases relied upon by him. In the given circumstances and facts of the case the appellant is case does not fall under any exception which could save him from the levy of penalty u/s 271D of the Income Tax Act, 1961 for contravention of provisions of section 269SS of the Income Tax Act, 1961. Accordingly, in my considered view the penalty u/s 271D of the Income Tax Act, 1961 for contravention of provisions of section 269SS of the Income Tax Act, 1961 has rightly been imposed. Therefore the penalty U/s penalty u/s 271D of the Income Tax Act, 1961 for

contravention of provisions of section 269SS of the Income Tax Act, 1961 is upheld. Accordingly, these grounds of appeal are dismissed.

4. Therefore, keeping in view the aforesaid factual and legal position, the appeal of the appellant is dismissed.”

7. The Ld. Counsel submitted that the Learned Commissioner of Income Tax (Appeals)-3, has grievously erred and not justified in confirming the penalty levied u/s 27 ID of the Act of Rs.20,00,000/- by the order of Addl. Commissioner of Income Tax, passed under 271D r/w section 269SS which is illegal, unjust and void ab initio and that both the authorities has acted arbitrarily without examining the evidences on record and without having rebutting the various judgments relied upon by the assessee. The brief written submission filed reads as under

“1. That the appellant is Director in a company named Jaideep Forex Pvt. Ltd. He filed his return for AY 2011-12 declaring his income as remuneration from company and other sources amounting to Rs. 154550/-

2. The case of the assessee was selected under scrutiny on the basis of AIR information for depositing Rs. 20.00 Lacs in cash in his saving bank account. During the assessment proceedings the assessee explained that cash was deposited out of petty cash held by the assessee in the capacity of director of the company M/s Jaideep Forex Pvt Ltd. The directors of the company were maintaining current account with the company and the amount was withdrawn by the Assessee (director) from company's bank account in to his current account maintained in the books of accounts of the assessee, which subsequently deposited in to his own saving account for the purpose of showing his financial position to support his son's Visa extension who was studying in Australia. Such amount of Rs. 20.00 Lacs

was re deposited into the current account of the assessee maintained with the company after some days. To Prove the genuineness of the transaction, the assessee produced copy of current account of the assessee maintained with the company, Books of Accounts of the company and Bank Statements of company and of the assessee alongwith bank certificate, The Ld. AO accepted the transaction as such on the basis of evidence produced, however he made addition u/s 2(22)(e) treating the amount of Rs. 20.00 Lacs as deemed dividend and completed the assessment proceedings with assessed income of Rs. 234256/-. During the assessment proceedings Ld. AO never doubted the genuineness of the transactions and all the evidences were produced to the satisfaction of the AO. The Ld. AO never invoked provisions u/s 269SS and 269TT of the Act.

3. The Ld AO referred the case to Addl. CIT, Moga range for initiating penalty u/s 271D and 271E of the Income Tax Act, 1961. The Ld. Addl. CIT started penalty proceedings and despite of the fact that the transaction is a genuine transaction and made out of current account of the directors maintain with the company, rejected the assessee plea and levy penalty u/s 271D and 271E. While rejecting assessee plea the Ld ADD! CIT did not considered the facts that the transaction of Rs. 20.00 Lakh was a genuine transaction made out of directors current account maintained with the company, which is out of the purview of the provisions of section 269SS and 269TT of the Act. Further the transaction w'as made by the assessee director in his exigency of showing his financial position for the purpose of his son's visa extension, believing in bonafied that there is no contravention of any provisions of Income Tax Act, 1961. In his plea assessee relied on various Superme Court and High Court Judgements discussed later on.

### **Submissions**

#### **Grounds Nos. 1 to 3 : - Re: Penalty U/s 271D of Rs. 20.00 Lakh**

1. That during the Penalty proceeding Ld. ADD1 CIT arbitrarily and unlawfully levied penalty of Rs. 2000000/- u/s 271 E. The order of the Ld. ADD1. CIT is unjust , unlawful liable to be set aside as per followings:-

**A. ANY PAYMENT OR REPAYMENT MADE PURSUANT TO CURRENT ACCOUNT MAINTAINED BETWEEN RELATED PARTIES CANNOT BE CONSIDERED AS VIOLATION OF SECTION 269SS AND 269TT :**

Any payments or repayments made pursuant to current account maintained between parties cannot be considered as violation of 269SS and 269T. It is rightly held by Madras High Court in the case of ***CIT V. Idhayam Publications Ltd., (2006) 285 ITR 221 (Mad)***

***"In this case there was a current account in the books of the assessee in the name of the one of the directors who used to pay money into the current account and also withdraw money from the same. The department treated these payments and withdrawals as violation of section 269TT as they were made in cash. Disapproving the action of the department the High court has held that "the deposit and withdrawal of money from the current account could not be considered as a loan or advance. Accordingly the order of the tribunal by which the penalty was cancelled was affirmed. "***

Similar view taken by ITAT Bench, B, Bangalore in the case of M/s CANARA HOUSING DEVELOPMENT CO. Vs. ACIT ITA No. 1425/Bang/2008.

**The above decision of Madras High Court also relied in following similar cases:**

- **The Commissioner Of Income-Tax vs M/S Samora Hotels P. Ltd. on 23 February, 2012, Delhi High Court**
- **Neeraj Shoes Industries Pvt. ... vs ACIT, ITA No. 5942/Del/2010, Income Tax Appellate Tribunal - Delhi.**

Applying above in the present case, where assessee is director of M/s Jaideep Forex Pvt. Ltd, is also maintaining current account with the company withdrawn and repaid the amount through current account cannot be held loan to be covered under the provisions of section 269SS and 269TT.

**B WHERE THE TRANSACTION IS GENUINE AND THERE IS SOME REASONABLE CAUSE AS REQUIRED IN SECTION 273B IS SHOWN PENALTY U/S 271D/271E NOT JUSTIFIED.**

Where the transaction of cash is bonafied and genuine and there is some reasonable cause due to which the transaction could not be made through crossed cheque and Draft and the transaction is duly recorded in to the books of accounts and creditors are genuine and transaction are not doubted, the penalty could not be sustained in law. The same ahs been discussed in following leading judgements :

In the case of **Narsingh Ram Kishor Kumar Vs. Union of India and Others** a reference has been made to the explanatory notes of finance act, 1984 by which section 269ss was inserted. It was interalia mentioned that unaccounted cash found during search and seizure operations is often explained by tax payers as representing loans or deposits from various persons. With a view to countering this devise a new section has been inserted debarring the person from taking or accepting loans or deposits otherwise than by account payee cheque or demand draft. Hence where the transactions entered in cash are genuine and reasonable cause, as required u/s 273B, is shown penalty u/s 271 E/27 ID is not called for.

In the case of **CIT Vs. Sunil Kumar Goel, (2009) 315 ITR 163 (P&H)** it has been mentioned that under section 273B, the assessee is permitted to show cause and tender explanation. The explanation of the assessee was found to be bona fide by the tribunal and it was also held that it was not aimed at avoiding any tax liability. The genuineness of the transaction was accepted.

In the case of **CIT vs. Balaji Traders, 303 ITR 312 (Mad)** it has been held that deletion of penalty was justified in a case where:- (i) creditors are genuine and transactions not doubted (ii) there is no revenue loss to the exchequer, and (in) there is business exigency forcing the assessee to take cash loan.

In the case of **Omeo Engineers Vs. CIT (2007) 294 ITR 599**, it was held that where there is no finding that transactions were not genuine and there is no malafide intention, the penalty could not be sustained in law.

In the case of **CIT vs. Maheshwari Nirntan Udyog, (2008) 302 ITR 201 (Raj)**, it has been held that where a reasonable explanation is furnished, levy of penalty u/s 27 ID is not justified.

In the present case also the transaction of Rs. 20.00 has been proved to be genuine to the satisfaction of AO and has not been doubted. There is no loss to the revenue and the transaction has been made in cash in such a circumstances, where the assessee was asked by Educational Consultants to deposit Rs. 20.00 Lakh in his own account to show his financial position to support extension in visa of his son's who was studying in Australia. Further the assessee was under bonafied belief that such cash transaction shall not in contravention of any provisions of income tax Act, as he has to refund the amount into the current account of the company in few days. There was no malafied intention of the assessee to conceal and black money or to evade any tax or otherwise.

In these circumstances there is reasonable cause as required u/s 273B to show his financial position to support extension in visa of his son's who was studying in Australia as per the advice of educational consultant and the ignorance of law relating to the provisions of section 269SS and 269TT. The assessee has duly explained in his plea to the penalty proceedings the circumstances and which are reasonable and genuineness of the transaction of Rs. 20.00 Lacs. In these circumstances levy of penalty u/s 271E is not justified.

The Ignorance of law is a reasonable cause as required u/s 273B to justify deletion of a penalty as held by Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. vs. State of UP f 1Q7Q) ii8 ITR 326 (SC) wherein it was held that there is no presumption in this country that even' person knows the law and it would be contrary to common sense and reason if it were so. It was also stated that "it is impossible to know all the statutory law, and not very possible to know all the common law". Further, the Hon'ble Madras High Court in the case of CIT vs. K P V S Mohammad Rowther & Co. 232 ITR 176 (Mad) held that ignorance of law can be a reasonable cause for the failure and deletion of penalty y was justified.

C Where the Ld AO during Assessment proceedings already made additions of such Loan( as held by AO) as deemed dividend u/s 2(22e), it is not justified to invoke provisions of section 269SS and 269TT of the Act.

The assessee is an ordinary person having limited sources of income. During AY 2008-09 he with his three family members float a private limited company for the forex business with the capital of Rs. 30.00 Lacs divided

in to four family members. He is not educated enough to understand the complex provisions of companies Act and Income Tax Act. For a layman like assessee he with his family own Rs. 30.00 Lacs as capital and he can use such capital for the purpose of business or personal use as per need irrespective of the fact that the company is separate legal entity from the promoters/directors and there are certain provisions and procedure to be followed in companies Act and Income Tax Act. In a logical sense also the assessee withdrawn his own family capital for temporary use and with his act there is no loss to revenue and there is no malafted intention of the assessee in doing so.”

8. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel in view of principles of natural justice.

9. We have heard the rival contentions, perused the material on record, impugned orders, written submission and case law cited before. The Ld. CIT(A) has stated that although the appellant has not attended the proceedings except once the authorized representative of the appellant filed submission before him and thereafter the appellant had not attended the proceedings at all. However, considering the facts of the case and the written submission filed by the appellant, we are of the considered view that the appellant may be given one more opportunity of being heard to establish its claim with corroborative evidences before the Ld. CIT(A) to adjudicate its appeal on merits of the case by rebutting the contention raised by the appellant in its written submissions as above.

10. It is seen that the appellant has received and repaid cash loans to Jaideep Forex Pvt. Limited as per details given below:

| Date       | Amount of loan repaid | Mode of repayment of loan |
|------------|-----------------------|---------------------------|
| 23.08.2010 | Rs.8,50,000/-         | By Cash                   |
| 24.08.2010 | Rs.8,00,000/-         | By Cash                   |
| 26.08.2010 | Rs.3,50,000/-         | By Cash                   |

The Addl. CIT, on perusal of above mentioned assessment order dated 10.12.2013, passed by the A.O., u/s 143(3) of the Income Tax Act, 1961, was satisfied that the assessee had received loans of Rs. 20 lacs, in cash from M/s jaideep Forex Pvt. Ltd. in which he has been one of the director, having 25% share. It was also observed that the assessee repaid the above said loans in cash to Jaideep Forex Pvt. Ltd., Taptej Singh Market, Moga. Being not satisfied with the reply of the assessee, the Addl. CIT Levied the disputed penalties u/s 271D and 271E of the Act.

11. The CIT(A) has observed that although the appellant has not attended the proceedings except once the authorized representative of the appellant filed submission. Thereafter the appellant has not attended the proceedings at all. However, considering the facts of the case and the written submission filed by the appellant the appeal of the appellant was

although stated to be decided on merit of the case but without issuing show cause notice as regards to taking rebuttal of the assessee on the adverse decision taken against him based on material on record which is certainly amounts to violation of natural justice.

12. In view of the principles of natural justice and the peculiar facts of the case, we consider it deems fit to remand the matter back to the file of the CIT(A) with the direction to adjudicate these captioned two appeals afresh on merits after considering the material evidence filed on record, to be filed during fresh proceedings and by granting adequate fresh opportunity of being heard, to the appellant assessee. Accordingly, the case is restored to the CIT(A), to decide the appeals afresh by speaking order on merits of the case as per law. No doubt, the assessee shall cooperate in the fresh proceedings.

13. In the result, both the appeals filed by the assessee are allowed for statistical purpose.

*Order pronounced in the open court on 18.07.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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