

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'C' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.640/PUN/2022

निर्धारण वर्ष / Assessment Year : 2016-17

Nilons Enterprises Pvt. Ltd., Sr.No.110/11/23, 6 th Floor, Baner, Bizbay, Baner, Pune 411 045 Maharashtra PAN : AABCN8601N	Vs.	JCIT, Range-2, Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Nikhil Pathak
Shri Suhas Kulkarni

Date of hearing 25-09-2023
Date of pronouncement 26-09-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the Id. CIT(A) in National Faceless Appeal Centre, Delhi on 27-06-2022 confirming the penalty imposed by the Assessing Officer (AO) u/s.271D of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2016-17.

2. Briefly stated, the facts of the case are that the AO found the assessee to have indulged in receipt of loans/deposits through modes

other than banking channels as reflected in Sl.No.31(1) of Form 3CD, being, the Tax Audit Report of the assessee. On being called upon to explain as to why penalty u/s.271D should not be imposed for violating the provisions of section 269SS, the assessee tendered explanation, which has been reproduced in the penalty order. Thereafter, the AO observed that the assessee accepted loan or deposit amounting to Rs.53,41,224/- from Mr. Deepak Sanghavi and Rs.8,21,370/- from Ms. Ritu Sanghavi in violation of the provisions of section 269SS. The assessee's explanation was rejected and the penalty was imposed. The Id. CIT(A) echoed the penalty order. Aggrieved thereby, the assessee is in appeal before the Tribunal.

3. Having heard the rival submissions and gone through the relevant material on record, it is seen that the trigger of penalty was made because of the alleged qualification in the tax audit report. A copy of the report has been placed on record, which indicates that the qualification has been made in a sweeping manner. Notwithstanding that, the assessee filed written submissions before the AO during penalty proceedings and also the first appellate proceedings, explaining the nature of transactions with complete details, which have not been controverted by the authorities. In any case, the question of imposition or otherwise of the penalty needs to be

determined on the basis of actual facts and not how the auditor viewed it in his report.

4. The AO imposed penalty u/s.271D for violation of section 269SS. The latter section, in turn, provides that no person shall take or accept from any other person any loan or deposit equal to or in excess of Rs.20,000/- otherwise than by an account payee cheque or account payee bank draft etc. Section 271D provides that if a person taken or accepts any loan or deposit in contravention of section 269SS, he shall be liable to pay penalty equal to amount of loan or deposit so taken or accepted. Thus, it is evident that penalty u/s.271D is leviable where loan or deposit is accepted by the assessee in excess of the specified amount otherwise than by an account payee cheque or bank draft etc. provided under section 269SS of the Act. With this understanding of the legal position, we proceed to examine the factual matrix of the case.

5. The first amount is Rs.8,21,370/- stated to have been taken by the assessee from Ms. Ritu Sanghavi, on which an equal amount of penalty was imposed and confirmed. Copy of account of Ms. Ritu Sanghavi is available on record. The first three items during the year are not relevant. Fourth item dated 30-09-2015, which has been debited by the assessee, is a sum of Rs.8.00 lakh with the narration

that it was the amount of self-assessment tax paid on behalf of Mrs. Ritu Deepak Sanghavi. The next item is dated 31-10-2015 which is again payment of self-assessment tax of Rs.21,370/- on her behalf. The next entry is dated 07-12-2015, by which the sum of Rs.8,21,370/- has been transferred to her husband's account, namely, Mr. Deepak Sanghavi. It is clear that the first two transactions of Rs.8.00 lakh and Rs.21,370/- are the payments made by the assessee on behalf of Ms. Ritu Sanghavi and these cannot be called as 'taking or accepting any loan' from Ms. Ritu Sanghavi. Since section 269SS is attracted when a person takes or accepts any loan or deposit in a mode otherwise than the banking channel etc., it has no application in the instant case of the assessee when no loan was taken or accepted by the assessee from Ms. Ritu Sanghavi. The credit amount is a transfer entry from her account to that of her husband, which again does not call for imposition of any penalty.

6. The second amount is Rs.53,41,224/- w.r.t. Mr. Deepak Sanghavi. The AO did not provide any breakup of this amount. The assessee has placed on record the extract of the account of Mr. Deepak Sanghavi and also the detail of the items totaling to Rs.53,41,224/- as under :

Sr.No.	Particulars	Date of transaction	Amount as per Books
1	Deepak Sanghavi	30-11-2015	13,51,507
2		30-11-2015	4,09,625
3		30-11-2015	10,52,682
3		30-11-2015	6,25,500
4		30-11-2015	6,008
5		30-11-2015	3,60,000
6		30-11-2015	40,000
7		30-11-2015	3,73,968
8		07-12-2015	8,21,370
9		31-03-2016	3,00,564
			53,41,224

7. On an examination of the account of Mr. Deepak Sanghavi in the books of the assessee with reference to the above tabulation, it can be seen that the first amount of Rs.13,51,507/- is debited to his account. The assessee paid this amount on his behalf and debited his account. Similar is the position regarding the second and third amounts of Rs.4,09,625/- and Rs.10,52,682/-, which have been debited to the account of Mr. Deepak Sanghavi. These amounts are in the nature of payments made by the assessee on behalf of Mr. Deepak Sanghavi. Thus, the provisions of section 269SS are not attracted, which apply only on taking or accepting loan and deposit. The next amount is Rs.6,25,500/- dated 30-11-2015 which is rent credited by the assessee to the account of Mr. Deepak Sanghavi. The next is a minor amount of Rs.6,008/- having transfer entry. These

two amounts, though have been credited to the account of Mr. Deepak Sanghavi, but do not represent any loan or deposit taken or accepted by the assessee. Rather these are the items of crediting his account with rent etc., which do not violate section 269SS. The next two items of Rs.3,60,000/- and Rs.40,000/- are again debit entries representing certain amounts paid by the assessee on behalf of Mr. Deepak Sanghavi. These can also not be considered as taking or accepting any loan. The next item is Rs.3,73,968/-, which is credited to the account of Mr. Deepak Sanghavi towards his salary for the month of November. This also cannot be characterized as an item of taking or accepting any loan attracting the mischief of section 269SS. The next amount is Rs.8,21,370/-, which was transferred from the account of Ms. Ritu Deepak Sanvhavi as discussed above. This also does not attract the provisions of section 269SS. The last amount is Rs.3,00,564/- which is again a debit entry towards provision made for interest on loan from Mr. Deepak Sanghavi. This entry arose by means of debiting interest account and crediting the account of Mr. Deepak Sanghavi towards interest payable to him. This also cannot be considered as violating the provisions of section 269SS of the Act.

8. We, therefore, hold that the assessee did not take or accept any loan either from Ms. Ritu Sanghavi or Mr. Deepak Sanghavi in

violation of provisions of section 269SS of the Act, which could have magnetized penalty u/s.271D of the Act. The impugned order is, therefore, overturned to this extent.

9. In the result, the appeal is allowed.

Order pronounced in the Open Court on 26th September, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 26th September, 2023
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'C' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	25-09-2023	Sr.PS
2.	Draft placed before author	26-09-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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