

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1845/Chny/2018**

निर्धारण वर्ष / Assessment Year: 2008-09

M/s. Thamira Green Farm P
Ltd.,
No. 1824/4, Gautham
Apartments, 1st Floor,
18th Main Road,
Anna Nagar West,
Chennai – 600 040.

The Additional Commissioner of
v. Income Tax,
Corporate Range -3,
Chennai.

[PAN: AACCT-7926-R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 12.07.2023

घोषणा की तारीख/Date of Pronouncement

: 22.09.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-11, Chennai, dated 09.03.2018 and pertains to assessment year 2008-09.

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

"1. The order of The Commissioner of Income Tax (Appeals) - 11, Chennai dated 09.03.2018 in .TA.No.315/2016-17/CIT(A)-

11 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the levy of penalty u/s 271D of the Act for the presumed violation of the provisions of section 269SS of the Act without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the sustenance of the levy of penalty u/s 271D of the Act was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the order imposing penalty was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The CIT (Appeals) failed to appreciate that the transaction between the company and the Director/share holder would be the outside the purview of the provisions of section 269SS of the Act, thereby vitiating the findings in para 6 & para 7 of the impugned order.

5. The CIT (Appeals) failed to appreciate that the decisions cited including the decision of the Jurisdictional High Court were completely overlooked while the decisions relied upon were applied out of context, thereby negating the stand taken in para 6 & para 7 of the impugned order to sustain the levy of penalty u/s 271 D of the Act.

6. The CIT (Appeals) failed to appreciate that the provisions of section 273B of the Act were completely missed while considering the necessity and compulsion for entering into the transaction with the Director/share holder and ought to have appreciated that the penalty under consideration for any violation of the provisions of section 269SS of the Act should not be construed as automatic, thereby vitiating the related findings.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. The brief facts of the case are that, in the course of assessment proceedings for the assessment year 2008-09, the Assessing Officer noticed that during the financial year 2007-08 relevant to assessment year 2008-09, the assessee had received loans in cash in excess of Rs. 20,000/- otherwise than by Account payee Cheque/Bank Draft in contravention of provisions of section 269SS of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Therefore, a show cause notice u/s. 271D r.w.s. 274 of the Act dated 29.06.2016, was issued and called upon the assessee to explain as to why an order imposing penalty should not be levied u/s. 271D of the Act. In response, the authorized representative of the assessee submitted that the appellant company had received loans from Shri. T. Mohan, Director of the company, for purchase of land, for the purpose of business of the company and said loan has been received in cash from the director for making payments directly to the seller of the land. The said arrangement was made because, the appellant company does not have any bank account by the given point of time and further the sellers of the land were residing in remote places and insisting for cash payments. Since, there is a business exigency in making cash payments, the appellant company

has taken loan from director in cash. Therefore, it cannot be said that there is a violation referred to u/s. 269SS of the Act, which attracts provisions of section 271D of the Act.

4. The AO, after considering relevant submissions of the assessee and also taken note of relevant facts opined that, the appellant has violated provisions of section 269SS of the Act, in accepting cash loan of Rs. 2,02,10,000/- from Shri. T. Mohan, Director of the company, which attracts provisions of section 271D of the Act. The Id. Assessing Officer, has discussed the issue at length in light of certain judicial precedents and held that the claim of the appellant that it could not open bank account in those areas for the reason that, they have purchased lands from various sellers and once the sellers found that there are transactions in the said area, they will escalate the price and will not be willing to sell their land is a figment of imagination and is not a reasonable or acceptable cause. Therefore, rejected arguments of the assessee and levied penalty of Rs. 2,02,10,000/-, which is the sum equal to loan received, in violation of section 269SS of the Act. The relevant findings of the AO are as under:

"7. The submission of the assessee are duly considered. At the first instance, it is pertinent to note that the assessee itself

admitted that entire transactions were made in cash and withdrawals were made from the Savings Account of the Director of the company maintained with Centurion Bank of Punjab National Bank. During the penalty proceedings, the assessee admitted that no bank account was maintained in the name of the assessee company and the entire transactions were made from the Director's bank account. Further, the assessee submitted copy of bank account of the Director Shri Mohan and ledger copy of current account of the Director maintained in the company for the current financial year. On perusal of the bank statement and ledger copy, it is crystal clear that the transactions were not in the nature of current account and the transactions occurred only for the purpose of purchase of the said properties.

8. In respect of the decision relied on by the assessee that in the case of M/s Idhayam Publications P Ltd., the transactions occurred were in a current account held by the Director of the Company with the assessee company and that the money was taken from a current account, wherein there were credit entries as well as debit entries in that account.

9. However, it is pointed out that in the assessee's case, no fund transfers took place as recognised in the said case and cash was only withdrawn by the Director of the company on various dates to the tune of Rs.2,02,10,000/- for purchase of land in the name of the company and hence similarities referred by the assessee is not acceptable. Hence, the cases related by the assessee company are held as not applicable to the present situations of the case.

10. As regards exigencies claimed by the assessee, it is relevant to mention here that in the case of M/s Dilli Cine Enterprises P Ltd., Vs Add. CIT(80 ITD 484)(2002)(Hyd), wherein it was held that the transactions done to meet exigencies of business are said to be reasonable. At the first instance, it is noticed that the assessee had not made any effort to open a bank account in the said areas; Further, the assessee's claim that they have not opened bank account in those areas on the reason that they have purchased from various sellers; when once the sellers found that there are transactions in the said area, they will escalate the price and will not be willing to sell their land is assessee's figment of imagination and is not a reasonable or acceptable cause for exigencies for purchase of lands. Even if the same submission

of the assessee is true its pointed out that the very purpose of Sec.269SS is to avoid such land transactions taking place in a non-transparent manner, leading to increase in "Black Money" rather its to encourage such transactions to take place through banking transactions. In this case, the assessee company has not even opened a bank account to purchase such a costly immovable property.

11. This clearly shows that the assessee has not made any effort to conduct financial transactions in a transparent manner. Therefore, its hereby held that the assessee company has not taken any effort to conduct business without violating Provisions of Income tax Act such as 269SS and has not established any reasonable cause for the way it has conducted its business transactions in cash; which has lead to increase in the "Black Economy".

12. From the above facts, it clearly goes to prove beyond doubt that the assessee had acted in contravention to provisions of Sec.269SS of the IT Act.

13. In view of the above facts, the receipt of Rs.2,02, 10,000/- made by the assessee is in contravention to Sec.269SS of the IT Act and it is held that a sum equal to the amount of transaction is leviable as penalty u/s. 271D of the Income Tax Act, 1961 in this case. Hence, a penalty of Rs.2,02,10,000/- (Rupees two crores two lakhs and ten thousand only) is levied as penalty u/s. 271D of the Income-tax Act."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submission on the issue along with certain judicial precedents which has been reproduced at para 5 & 6 of Id. CIT(A) order. The sum and substance of arguments of the assessee before the CIT(A) are that there is a business exigency in accepting cash loan from Director of the appellant company, in as much as the company

does not have any bank account at the given point of time and sellers are insisting for cash payment. Further, the transactions between appellant and company are bonafide and genuine and the Director has explained source for said loans. Therefore, when the transaction is bonafide and genuine, the rigorous of provisions of section 269SS r.w.s. 271D of the Act, cannot be applied.

6. The Id. CIT(A), after considering relevant submissions of the assessee opined that, mere explanation of business compulsion for taking cash loan is not a sufficient ground for avoiding penal consequences for the default u/s. 269SS r.w.s. 271D of the Act. Moreover, the assessee company has not been able to produce any evidence on record, in support of its explanation of business compulsion for having taken the cash loan. Therefore, rejected arguments of the assessee and sustained penalty levied u/s. 271D of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

7. The Id. Counsel for the assessee, Shri. S. Sridhar, Advocate, submitted that the Id. CIT(A) is erred in sustaining levy of penalty u/s. 271D of the Act, for the presumed

violation of section 269SS of the Act. He further submitted that provisions of section 269SS of the Act, would get attracted in the events of a transaction of acceptance of loan/deposit. In the present case, the transaction between appellant and director is a routine current account, where the Director has given money to the company for purchase of lands. The Id. Counsel for the assessee further submitted that assuming for a moment, said transaction is considered as loan or deposit, but still it is outside the scope of provisions of section 269SS of the Act, because the Director Shri. T. Mohan has directly paid consideration for purchase of land to seller and has routed the transactions by way of journal entries in the books of accounts of the assessee. Since, the alleged loan has been taken through journal entries, the same cannot be considered as violation of section 269SS of the Act. In this regard he relied upon the decision of Jurisdictional High Court of Madras in the case of CIT vs Idhayam Publications Ltd [2006] 285 ITR 221 and the decision of Hon'ble Delhi High Court in the case of CIT vs M/s. Muthoot Financiers in ITA No. 336/2002 dated 03.02.2015.

8. The Id. DR, Shri. AR V Sreenivasan, Addl. CIT, supporting the order of the Id. CIT(A) submitted that facts brought on record by the Assessing Officer clearly shows that, there is a violation of provisions of section 269SS of the Act, which attracts penalty u/s. 271D of the Act. In fact, the assessee never disputed fact that loan is accepted in cash, but contended that said loan is not loan or deposit within the meaning of section 269SS of the Act, but only a current account transactions between the appellant and the Director. However, if you go through the ledger extract of loan amount in the books of account of the company, it is clear that it is a loan account transactions between Director and company. Therefore, the Id. Assessing Officer has rightly levied penalty u/s. 271D of the Act and their order should be upheld. In this regard, he relied upon the decision of Jurisdictional High Court of Madras in the case of Vasan Healthcare P Ltd vs ACIT [2019] 411 ITR 499 (mad). He, had also relied upon the decision of Hon'ble High Court of Madras in the case of P. Baskar vs CIT [2012] 340 ITR 560 and Kasi Consultant Corporation vs DCIT [2009] 311 ITR 419.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have also carefully considered relevant case laws relied upon by both the parties. There is no dispute with regard to the fact that, the appellant company has received loans from Shri. T. Mohan, Director of the company, amounting to Rs. 2,02,10,000/-. In fact, from the financial statement of the appellant company for the year ending 31.03.2008, it is undoubtedly clear that the appellant company has received unsecured loan of Rs. 2,02,10,000/- from Shri. T. Mohan, one of the Directors of the company. The arguments of the Id. Counsel for the assessee, is that transactions between appellant company and its director is outside the scope of provisions of section 269SS of the Act. According to the Id. Counsel for the assessee, amount received as loan from the director cannot be considered either as deposit or as a loan in terms of Companies (Acceptance of Deposits) Rules, 1975, conferred by section 58A r.w.s. 642 of the Companies Act, 1956. Since, the transactions between the appellant and its director is not a loan or deposit as defined u/s. 269SS of the Act, the question of levying penalty u/s. 271D of the Act does not arise.

10. We have given our thoughtful consideration to the reasons given by the AO to levy penalty u/s. 271D of the Act, for contravention of provisions of section 269SS of the Act, in light of various arguments of the Id. Counsel for the assessee and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, as per provisions of section 269SS of the Act, any loan or deposit in excess of Rs. 20,000/- cannot be received other than by way of account payee cheque/bank draft or by way of electronic transfer of funds. The term loan or deposit has been defined which includes loan or deposit of money. In general meaning of loan means, any loan borrowed from third party with payment of interest. Similarly, the original meaning of deposit means any sum received as deposit in pursuant to payment of interest. Therefore, the transactions between the appellant company and its director has to be understood in the context, in which said transactions has been entered into and further to ascertain whether said transactions falls within the ambit of provisions of section 269SS of the Act. Admittedly, the appellant has received loan from its director Shri. T. Mohan, for the purpose of purchase of lands in the name of the company. In fact, the appellant company has purchased lands

in various survey numbers in Madhavan Kurichi and Manappadu village to the extent of 128 acres for a total consideration of Rs. 2,02,78,994/-. The source of said land purchased was loan received from Shri. T. Mohan, Director of the appellant company. The director of appellant company has explained source for loan given to appellant company and as per details filed by the assessee, amount has been drawn from savings bank account of Shri. T. Mohan, maintained with Centurion Bank of Punjab Ltd., on various dates and directly paid to sellers of the land. It is also an admitted fact that, the appellant company and the director has disclosed the transactions in their books of accounts for the relevant financial year. Therefore, from the above, it is undoubtedly clear that the transactions are genuine and the appellant is able to explain source for loan received from director.

11. Having said so, let us come back, whether explanation offered by the appellant is bonafide and reasonable or not. According to the appellant, there is an business exigency in accepting cash loan from director because the company does not have any bank account at the given point of time in a place, where the lands has been purchased. Further, the

sellers of the land were insisting for payment in cash. Although, the appellant could not explain why it could not open a bank account in the name of the company, but going by the transactions of purchase of land and the place where said transaction had happen, it appears that there is a bonafide reason for the assessee to make cash payments for purchase of land and also acceptance of loan in cash from the Director. Therefore, once the transactions between the appellant company and its director are genuine and bonafide and explanation offered by the assessee for accepting loan in cash is reasonable, then levy of penalty u/s. 271D of the Act, for contravention of provisions of section 269SS of the Act, needs to be verified in light of provisions of section 273B(1) of the Act.

12. Provision of section 273B deals with reasonable cause. If there is a reasonable cause in accepting loans in violation of provisions of section 269SS of the Act, then said transactions needs to be taken out of the rigorous of section 271D of the Act. In order to consider whether there is a reasonable cause in violation of relevant provisions, the explanation of the assessee needs to be considered. If the explanation of the

assessee is bonafide and reasonable, then said explanation needs to be considered in light of reasonable cause as provided u/s. 273B of the Act. In the present case, if you go by the explanation of the assessee, it appears that there is a reasonable cause in accepting loan from director in contravention of provisions of section 269SS of the Act, for two reasons. Firstly, entire amount of loan has been utilized for acquisition of capital asset for the purpose of business of the company. Secondly, the appellant and the director both have disclosed transactions in their books of accounts for the relevant previous year. Further, the director has explained the source for loan given to the appellant company. Since, all these paramount's are satisfied, the genuineness of the transactions is not in doubt. Further, it is a case of loan between director and appellant company. Although, the appellant company and its director are two separate legal entities, but both cannot be considered as separate for the purpose of these transactions. If there are transactions between company and director, then said transactions inter-se cannot be considered as loan or deposit within the meaning of section 269SS & 269TT of the Act, and this principle is supported by the decision of Hon'ble Delhi High Court in the

case of CIT vs M/s. Muthoot Financiers (Supra), where it has been held that no penalty can be imposed on assessee firm in respect of transactions inter-se between assessee and its partners, even though there is a violation of section 269SS & 269TT of the Act. If you apply above analogy to transactions between the director and the company, then in our considered view transactions inter-se between company and director cannot be treated as violation of section 269SS & 269TT of the Act. Further, even assuming for a moment, but not conceding cash loans received from director, which is in contravention of section 269SS of the Act, but still the appellant company can argue that it is a capital account transactions between director and company. Further, loan transactions between director and company can always be considered as equity capital. If these transactions are considered as equity capital, then it is outside the scope of section 269SS of the Act. In the present case, since it is solitary transaction of loan from one director, it can always be considered as a share capital received from the director. Therefore, for this reason also penalty levied by the Assessing Officer cannot be sustained.

13. At this stage, it is relevant to consider the decision of Hon'ble Madras High Court in the case of CIT vs Idhayam Publications Ltd (Supra).

14. Coming back to the case laws relied upon by the Id. DR present for the revenue. The Id. DR, took support from the decision of Hon'ble High Court of Madras in the case of Vasan Healthcare P Ltd vs ACIT (supra). We find that in the said case, the director of the assessee company obtained cash loan from the financier and same was deposited by him in cash in bank account of the assessee and claimed that said loan has been received for the purpose of business exigency. Since, the appellant company has obtained loan from third party financier, the Hon'ble Court held that provisions of section 269SS r.w.s. 271D of the Act, is applicable. In the present case, it is a direct transaction between the appellant company and director and further the assessee could able to explain business exigency and therefore, we are of the considered view that the decision of Hon'ble Madras High Court in the case of Vasan Healthcare P Ltd vs ACIT (supra), is not applicable to the facts of the present case.

15. The Id. DR, has also relied upon the decision of Hon'ble High Court of Madras in the case of P. Baskar vs CIT (Supra). We find that in the said case, the assessee has obtained cash loan in the form of cheque discounting facility with the financiers and assessee could not explain business exigency with evidence. Under those facts, the Court held that the provisions of section 271D of the Act, was rightly invoked and penalty u/s. 271D of the Act is in accordance with law. In the present case, simpliciter transaction between company and director are in the nature of current account and thus, said case laws cannot be applied to the facts of the present case.

16. The Id. DR, also relied upon the decision of Hon'ble High Court of Madras in the case of Kasi Consultant Corporation vs DCIT (Supra). In the said case, the assessee firm has accepted deposits in cash exceeding prescribed limit from the public for the purpose of real asset business and said loans were in contravention of provisions of section 271D of the Act and thus, the Hon'ble High Court held that penalty u/s. 271D of the Act is applicable. In the present case, it was not a case of loan from public, but amount received from director to meet

the business exigencies. Therefore, the case laws relied upon by the Id. DR is not applicable to the facts of the present case.

17. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that transactions between appellant company and director are in the nature of current account transactions, which does not come under the purview of loan and deposit as per section 269SS of the Act. Therefore, we are of the considered view that the Assessing Officer is erred in levying penalty u/s. 271D of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained penalty levied by the Assessing Officer. Thus, we set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete penalty levied u/s. 271D of the Act.

18. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 22nd September, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 22nd September, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF