

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 1913/Mum/2023
(A.Y. 2012-13)**

The Dy. Commissioner of Income-tax, 15(3)(1), Mumbai	Vs.	M/s Translands Infrastructure Developers P. Ltd. JN-3-14-5, Asshirwad CHS, Sector-09, Vashi, Navi Mumbai-400 703
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AADCT 0036 B		
Appellant	..	Respondent

Appellant by :	Ms. Rupa Nanda
Respondent by :	Shri P. D. Chougule, Sr. AR

Date of Hearing	06.09.2023
Date of Pronouncement	05.10.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the NFAC (NFAC), Delhi, dated 27.03.2023 for A.Y. 2012-13. The revenue has raised the following grounds before us:

- 1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the Penalty u/s 271D of the Income Tax Act, 1961 based on fact that quantum addition has been deleted by ITAT while as per Income Tax Act, 1961 the Levy of the penalty u/s 271D is not dependent on the deletion of addition made in the Assessment Order at appellate stage and is on account of*

specified violation mentioned in section 269SS of the Income Tax Act, 1961 and penalty has been rightfully imposed in current year as journal entry has been taken in this year.

2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in holding that transaction was a bonafide transaction and there exists a reasonable cause u/s.273B of Act despite the finding of the CIT(A) in appellate proceeding against Assessment Order that entries made in the books of the appellant (Assessee) in the previous year is an attempt to show the amount paid as liabilities pertaining to the previous financial years are in fact bogus entries?

3. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that transaction was a bonafide transaction which took place prior to 12.06.2012, wherein the judgment of Hon'ble Bombay High Court in CIT vs Triumph International Finance (India) Ltd only clarified the principle that transactions effected through journal entries in the books of the assessee would amount to repayment of any loan or deposit otherwise than by account payee cheque or account payee bank draft and it did not granted any immunity from imposition of penalty for transactions undertaken before 12.06.2012.

4. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored.

5. The Appellant craves leave to add to, amend, alter any of the foregoing grounds of appeal."

2. Fact in brief is that the return of income declaring total of Rs. 51,47,530/- was filed on 30th March, 2013. The assessment u/s 143(3) read with section 147 of the Act was finalized on 11th Dec, 2017 and penalty proceedings u/s 271D for failure to comply with the provisions of section 269SS of the act was initiated in respect of addition on account of unexplained cash credit u/s 68 of the Act of Rs. 1,85,00,000/- being opening balance payable to M/s Sampada Chemicals Ltd as on 1st April, 2011 on account of share of joint venture expenses which was paid by M/s Dawn Infrastructure Pvt. Ltd. a related company on behalf of the assessee, creating a loan liability for the assessee company. Since said amount was paid by M/s Dawn Infrastructure Pvt. Ltd. on behalf of the assessee company to M/s Sampada Chemicals Ltd and the said loan transaction credited in the books of accounts of the assessee by journal entry therefore, proceeding u/s

271D for failure to comply with the provision of section 269SS of the Act was initiated.

3. On query, the assessee explained that the payment of Rs. 1,85,00,000/- was payable by the assessee company on account of joint venture expenses and on its behalf the payment was made by M/s Dawn Infrastructure Pvt. Ltd. to M/s Sampada Chemicals Ltd and the same was shown under the head current liabilities in the financial statement of the assessee company. The amount payable to M/s Dawn Infrastructure Pvt. Ltd. was repaid by the assessee company during the F.Y 2012-13 relevant to A.Y 2013-14. The assessee submitted that it had not received any cash from M/s Dawn Infrastructure Pvt. Ltd. and there was non contravention of the provisions of section 269SS of the Act as no cash had been accepted by the assessee. However, the AO has not accepted the submission of the assessee. He was of the view that the assessee company had closed the books of accounts of 31st March, 2012 with M/s Sampada Chemicals Ltd by taking new loan from M/s Dawn Infrastructure Pvt. Ltd. to the amount of Rs. 1,85,00,000/- in its books of accounts through journal entry. Therefore, the assessee has violated provisions of section 269SS of the Act. Therefore, the Id. AO held that the assessee company had violated the provisions of section 269SS of the Act and committed default within the meaning of section 271D of the act for which a penalty is leviable. Therefore, the AO has levied a penalty of Rs. 1,85,00,000/- u/s 271D of the Act.

4. Aggrieved the assessee filed the appeal before the Id. CIT(A). However, the Id. CIT(A) has allowed the appeal of the revenue.

5. The relevant operating part of the decision of Id. CIT(A) is reproduced as under:-

"7.2 Finding on GOA No. 1 and 2:-

a) AO made addition u/s.68 of Act of Rs.1,85,00,000/- being opening balance payable to M/s. SCL as on 01.04.2011 on account of share of JV expenses which was paid by an associate concern M/s. DIPL on behalf of appellant during FY 2011-12.

b) Payment of Rs.1,85,00,000/- to M/s. SCL was made by M/s. DIPL on behalf of appellant. The said transaction was shown as loan taken from M/s. DIPL in books of appellant by passing journal entry by

- Debiting the account of M/s. SCL .*
- Crediting the account of M/s. DIPL*

c) AO levied penalty U/s. 271D holding that loan taken from M/s. DIPL was accepted in contravention to section 269SS of Act. Penalty u/s.271D was levied for payment of Rs.1,85,00,000/- made by M/s. DIPL to M/s. SCL which was payable by appellant on account of JV expenses on its behalf.

d) Payment made by M/s. DIPL to M/s. SCL on behalf of appellant was shown under the head "Current Liabilities" in financial statement of appellant. Appellant contended that the amount payable to M/s. DIPL was repaid by appellant during FY 2012-13 and copy of ledger account was filed at page 24 of annexure to written submissions filed before the undersigned.

7.3 Genuineness of Transaction of Rs.1,85,00,000/-

a) AO has levied penalty u/s. 271D of Act and held that judgements of Hon'ble Bombay High Court and Hon'ble Delhi High Court are not applicable in case of appellant because the said transaction of Rs.1,85,00,000/- is not genuine and not a bonafide transaction and it has been established in the assessment proceedings that said transaction is an accommodation entry in form of loan and was not genuine and appellant had made willful attempt to evade tax. (Refer para 3, para 6, para 7 and para 8 of penalty order).

b) In the order passed u/s. 143(3) r.w.s. 147 in case of appellant for AY 2012-13 the AO in para 6.8(a) of assessment order has held that.

- The said transaction of Rs.1,85,00,000/- is nothing but an eye wash transaction for accommodation entry and the said transaction is not genuine.*
- There was a willful attempt by appellant to reduce its tax liabilities.*

- Hence, the said amount of Rs.1,85,00,000/- was added u/s.68 of Act.

c) Appeal was filed by appellant before Hon'ble ITAT 'F' Bench Mumbai who vide order dated 21.02.2022 in ITA No. 1676/Muin/2020 for AY 2012-13. The Hon'ble ITAT vide para 5 of the appellate order deleted the addition made by the AO of Rs.1,85,00,000/- u/s. 68 of Act. The Hon'ble ITAT. deleted the additions of Rs.1,85,00,000/- and Rs.3,35,00,000/- made by the AO. Appellant furnished copy of the order passed by Hon'ble ITAT during appellate proceedings.

Hence, the action of AO in treating this transaction of Rs.1,85,00,000/- as non genuine and non bonafide transaction was deleted and the finding of AO that this transaction was a willful attempt to evade tax was not upheld by Hon'ble ITAT.

Thus, in view of the order of Hon'ble ITAT, this transaction of Rs. 1,85,00,000/- is not a non genuine transaction.

d) Hence, the very basis of the AO for levying penalty u/s. 271D and the very basis of the AO in not accepting the judgements of Hon'ble Bombay High Court in CIT vs Triumph International and Hon'ble Delhi High Court in CIT vs Noida Toll Bridge does not hold any ground in view of Hon'ble ITAT's order in appellants case for AY 2012-13 where in the said transaction of Rs. 1,85,00,000/- is held to be genuine transaction.

e) Hence, the basis of levying penalty u/s.271D that transaction of Rs. 1,85,00,000/- is not genuine and not bonafide as held by AO resulting in addition of Rs.1,85,00,000/- u/s.68 in order u/s. 143(3) r.w.s. 147 of Act has been deleted by Hon'ble ITAT.

7.4 a) Penalty u/s.271D is leviable if person takes or accepts any loan or deposit or a specified sum in contravention of provision of section 269SS of Act.

Appellant has not received any cash from M/s. DIPL. The transaction of loan by way of payment to other party to whom amount was payable by appellant and crediting the account of M/s. DIPL who made payment on behalf of appellant.

b) The purpose of introduction of section 269SS has been discussed by Hon'ble Supreme Court in ADI vs A.B. Shanthi in 255 ITR 258 (SC) and relevant part is reproduced as under:-

"3. Section 269SS was inserted by the Finance Act, 1984 with effect from 1-4-1984, but the same was made operative from 1-7- 1984. The Income-tax Department in course of searches carried out by them from time to time recovered large amounts of unaccounted cash from certain taxpayers and often the taxpayers gave explanation for their unaccounted cash to the effect that they had borrowed loans or received deposits made by other persons. Sometimes, it was noticed that the unaccounted income was also brought into the books of account in the form of loans and deposits and later they would obtain confirmatory letters from other persons in support of their explanation. The department was not able to unearth the source of such unaccounted cash. Therefore, in order to plug the loopholes and to put an end to the practice of giving false and spurious explanation by taxpayers, a new provision was inserted in the Act debarring persons from taking or accepting from any other person any loan or deposit otherwise than by account payee cheque or account payee bank draft, if the amount of such loan or deposit or the aggregate amount of such loan or deposit is Rs. 10,000 or more. The amount of Rs. 10,000 was later revised as Rs. 20,000 with effect from 1-4-1989."

c) The Hon'ble Delhi High Court in CIT vs Noida Toll Bridge Co. Ltd. In 262 ITR 260 held as under:-

Provisions of section 266SS are not attracted because:-

- Transaction was by way of account payee cheque.*
- No payment on account was made in cash either by assessee or on its behalf.*
- No loan was accepted by assessee in cash.*
- Payment of Rs.4.8 crore made by assessee through IL & FS, which holds more than 30% of paid up capital of assessee, through journal entry in books of accounts of assessee by crediting the account of IL & FS.*

The facts of this case is similar to facts of appellant where too the transaction was made vide journal entry.

d) The Hon'ble Bombay High Court in CIT vs Triumph International finance (India) Ltd in 345 ITR 270 held that "loan taken by way of journal entry would violate the provisions of section 269SS warranting levy of penalty u/s. 2710 of Act".

However, it was further held that reasonable cause given by assessee should be considered. Hon'ble High Court took note of the fact that Revenue has not shown that transaction was not bonafide transaction and was made with a view to evade tax. It was held that explanation given by assessee before Hon'ble High Court about adjustment of amount due from M/s. Investment Trust of India is a "reasonable Cause".

In the present case also the Hon'ble ITAT has deleted the addition made by AO of Rs.1,85,00,000/- u/s.68 of Act by AO. Hence, in the present case it can be said that transaction is a bonafide transaction and same was not made with a view to evade tax.

e) The Hon'ble ITAT 'D' Bench Mumbai in Ramachandra Agarwal HUF vs JCIT, Range 13(3) in ITA No. 7163/Mum/2012 dated 02.12.2015 held as under-

- Direct payment of cheque on behalf of assessee may not amount to violation of section 269SS of Act.*
- Explanation of assessee amounts to a reasonable cause.*
- Revenue has not shown that transaction was not genuine and made with a view to evade tax.*
- Penalty u/s.271D was deleted.*

In the present case also the Hon'ble TIAT has deleted the addition made by AO u/s.68 of Act of Rs.1,85,00,000/- Thus, the said transaction is held as genuine and not made to evade tax.

f) The Hon'ble Delhi High Court in CIT vs World Wide Township Projects Limited in 367 ITR 433 held as under-

"A plain reading of the section 269SS indicates that it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of books entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the Explanation to section 269SS which defines loan or deposit to mean "loan or deposit of money". The liability recorded in the books of account by way of journal entries, ie crediting the account of a party to whom monies are payable or debiting the account of a party from whom

monies are receivable in the books of account, is clearly outside the ambit of the provision of section 269SS, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels. PACL made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of PACL. In view of this admitted position, no infringement of section 269SS is made out. [Para 8]"

It has been clearly held that liability recorded in books of accounts by way of journal entries is clearly outside the ambit of Section 266SS because passing such entries does not involve acceptance of any loan or deposit.

g) The Hon'ble ITAT Ahmedabad in ACIT vs Gujarat Ambuja Proteins Limited in 3 SOT 811 held as under:-

"Section 269SS, read with section 271 D, of the Income-tax Act, 1961 Deposits - Mode of taking/ accepting - Assessment year 1992-93- Whether where there was no actual receipt or money by assessee-company and amounts were credited by journal entries on account of payments made by its sister concern for and on behalf of assessee-company, Assessing Officer was not justified in holding that assessee had taken those deposits in violation of section 269SS and thereby imposing penalty under section 271D- Held, yes".

It was held that:-

- Where there is no actual receipt of money by assessee.*
- Amounts were credited by journal entries on account of payments made by its sister concern for and on behalf of assessee.*
- AO not justified in imposing penalty u/s.271D.*

This judgement is squarely applicable to the facts of the appellants case.

7.5 a) The Hon'ble ITAT Mumbai in DCIT vs Macrotech Developers in ITA No. 3112/Mum/2019 vide order dated 24.03.2022 for AY 2013-14 held as under:-

- In the said transaction no loans are accepted but merely journal entries are passed is a reasonable cause even if there is a violation of section 269SS of Act as envisaged u/s.273 of Act.*

- *Business constraint and Exigency and administrative convenience constitutes reasonable cause within meaning of Section 273B of act. No penalty u/s.271D and 271E can be involved.*
- *Reliance was placed on judgement of Hon'ble ITAT Mumbai Coordinate Bench in DCIT vs Macrotech Developers Ltd in ITA No. 3038, 3046, 3049 and 4054/Mum/2019 dated 25.11.2021.*

b) The Hon'ble Bombay High Court in CIT vs Lodha Properties Development Pvt. Ltd. in ITA No. 172 of 2015 for AY 2009-10 vide order dated 06.02.2018 held as under:-

- *Accepting / repaying loans and advances vide journal entries contravenes section 269SS and section 269T.*
- *Penalty u/s.271D cannot be levied if the transaction is bonafide and genuine and there is a reasonable cause u/s.273B.*

c) The other judgements in favour of appellant holding that penalty u/s.271D is not leviable on acceptance of loans by passing journal entries in books of accounts is not in violation of section 269SS of Act if transaction is genuine and bonafide, there is no willful attempt to evade tax and there is reasonable cause u/s.273B of Act.

- *Premier Breweries Ltd vs CiT in 372 ITR 180.*
- *Sunflower Builders vs DCIT (1997) 61 ITD (Pune) 227.*
- *ACIT vs Ruchika Chemicals & Investment (P) Ltd (2004) in 88 TTJ (Del) 85.*
- *ACIT vs Lala Murari Lal & Sons (2004) 2 SOT (Lko) 543.*

d) The Hon'ble ITAT Ahmedabad in DCIT vs Analytical Technologies Ltd. in ITA No. 1620/Ahd/2019 for AY 2014-15 vide order dated 27.07.2022 held as under-

- *No penalty u/s.271D can be levied for loan given to Company through journal entry.*

e) The Hon'ble ITAT Mumbai in Sumangala Developers Ltd vs Addl. CIT, Central -6 vide order dated 12.09.2018 held as under:-

- *Transaction were undertaken prior to the decision dated 12.06.2012 of Hon'ble Bombay High Court in Ajitnath Hitech Builders Pvt. Ltd through journal entries. Hence, transactions*

undertaken through journal entries prior to 12.06.2012 constitute reasonable cause u/s.273B of Act.

- *These transactions are not hit by provisions of section 269SS /269T prior to decision rendered by Bombay High Court on 12.06.2012.*
- *Judgements relied upon were:-*
- *Hon'ble ITAT Cochin in Muthoot M George Bankers vs ACIT in 46 ITD 10 dated 16.04.1993.*
- *Hon'ble ITAT Ahmedabad in Bombay Conductors & Electricals Ltd vs DCIT in 90 taxmann.com 138 dated 30.11.1995.*
- *Hon'ble ITAT Agra Bench in ITO vs Amarnath Shivraj HUF in 1 SOT 346 dated 28.02.2003.*
- *Hon'ble ITAT Kolkata in Krishna RR Pathak HUF in 90 TTJ 940 dated 12.03.2004.*
- *Hon'ble Rajasthan High Court in CIT vs Hissaria Bros in 291 ITR 244 dated 21.07.2006.*
- *Hon'ble ITAT Ahmedabad in ACIT vs Western India Ceramics Pvt Ltd in 20 taxmann.com 317 dated 12.10.2020.*

7.6 In view of the above facts and respectfully following the judgements as outlined in paras 7.2 to 7.5 of this order it is hereby held as under:-

- *There was no actual receipt of money by appellant and transaction was vide journal entries on account of payment made by associate concern for and on behalf of appellant. Transaction is prior to 12.06.2012 hence, AO was wrong to hold that there is violation of section 269SS. As held by Hon'ble ITAT Mumbai in Sumangala Developers [para 7.4(e) of this order] the transaction undertaken through Journal entries prior to 12.06.2012 constitutes a "reasonable cause" as they were entered prior to the judgement of Hon'ble Bombay High Court dated 12.06.2012.*
- *Clause (iii) of expin to section 269SS defines loan or deposit to mean "loan or deposit" of money. Transactions recorded by way of*

journal entries is outside provisions of section 269SS as such entries do not involve acceptance of any loan or deposit.

- *As held by Hon'ble ITAT in case of appellant for AY 2012-13 the addition made by AO of Rs.1,85,00,000/- was deleted. The findings of AO against the appellant and the addition made u/s.68 of Act by AO in order u/s.143(3) r.w.s. 147 of Act was deleted by Hon'ble ITAT vide order dated 21.02.2022 in ITA No. 1676/Mum/2020.*
- *There was no payment in cash either by appellant or on its behalf and it could not be said that there was any violation of section 269SS of Act.*
- *There no actual receipt of money by appellant. Amount was paid by journal entries on account of payment made by appellant's group concern for and on behalf of appellant. There is no violation of section 269SS. Amount of Rs.1,85,00,000/- was paid by appellants related company i.e. M/s. DIPL to M/s. SCL on behalf of appellant and shown as "other current liabilities". The same has been paid vide journal entry by M/s. DIPL on 27.06.2011 and 30.06.2011.*
- *Section 269SS is not relevant as there was no cash transfer. There was no actual transfer of money. Creation of journal entries was a legitimate method to adjust the accounts within a group and there was a cause for creating the journal entries. Until the Hon'ble Bombay High Court's ruling dated 12.06.2012 the appellant was under legitimate belief that creation of journal entries was an accepted practice in this situation which does not contravene section 269SS. This belief originated from Hon'ble ITAT's judgements in various cases prior to Hon'ble Bombay High court's ruling dated 12.06.2012. Another previous judgement of Hon'ble Bombay High Court also upheld this position. In view of these facts as the said transaction was prior to 12.06.2012 the appellant had reasonable cause u/s. 273B of Act.*
- *Therefore there was a reasonable cause for the appellant to settle his debt through journal entries.*

7.7 In view of the above facts as outlined in paras 7.2 to 7.6 above it is hereby held that:-

- *Transaction was a bonafide transaction which took place prior to 12.06.2012 (as said addition of Rs.1,85,00,000/- has been deleted by Hon'ble ITAT).*

- *Transaction was not made with a view to evade tax.*
- *There exists a reasonable cause u/s.273B of Act.*

Hence, the penalty levied u/s.271D by the AO of Rs.1,85,00,000/- is not sustainable in the eyes of law and same is hereby deleted.

AO is directed to delete the penalty levied of Rs.1,85,00,000/- u/s. 271D of Act. GOA No. 1 and 2 are allowed.

7.8 GOA No. 3 is routine and general in nature.

8. In the result, appeal is allowed.”

6. Heard both the sides and perused the material on record. The assessment in the case of the assessee was completed u/s 143 read with section 147 of the Act on 11th Dec, 2007 and penalty u/s 271D was initiated for violation to comply with the provisions of section 269SS on account of unexplained cash credit added u/s 68 of the Act on account of payment of Rs. 1,85,00,000/- made to M/s Sampada Chemicals Ltd on behalf of the assessee by its related company M/s Dawn Infrastructure Pvt. Ltd. The assessee had shown its liability towards its sister concern M/s Dawn Infrastructure Ltd in the books of the assessee by way of passing of journal entry by debiting the account of M/s Sampada Chemicals Ltd and crediting the account of M/s Dawn Infrastructure Pvt. Ltd. The AO levied penalty u/s 271D of the Act holding that the loan taken from M/s Dawn Infrastructure Pvt. Ltd was accepted in contravention of sec. 269SS of the Act. During the course of appellant proceedings before us. The Id. Counsel has placed reliance upon on the decision Hon'ble Delhi High Court in the case of *CIT vs. Noida Toll Bridge Co. Ltd. [2004] 139 taxman 115 (Delhi)*. The Id. counsel further submitted that similar issue on identical facts has been adjudicated by the Coordinate Bench of the ITAT, Mumbai in favour of the assessee in the case of *Ramchandra Agarwal (HUF) vs. Jt. Commissioner of Income Tax-Range 13(3), 426, Mumbai in ITA No. 7163/Mum/2012 dated 2.12.2015*. The Id. Counsel also placed reliance on decision of Hon'ble High Court of Delhi in the case of *CIT vs.*

Worldwide Township Projects Ltd. [2014] 48 taxmann.com 118 (Delhi). The Id. Counsel submitted that decision of Hon'ble Mumbai High Court in the case of CIT vs. Triumph International Finance (India) Ltd. (345 ITR 270) was considered by the ITAT Mumbai in the case of Ramchandra Agarwal. In the case of Triumph International Finance (India) Ltd the Hon'ble High Court held that the reasonable cause should be considered and the revenue has not shown that the transactions was made to evade tax. The only issue is the adjustment of the transactions of the sister concern M/s Dawn Infrastructure Pvt. in the books of account of the assessee on account of payment made on behalf of the assessee to M/s Sampada Chemical Ltd.

7. We have perused a copy of ledger account M/s Sampada Chemicals Ltd for A.Y 2012-13 placed at page No. 32 of the paper book showing opening balance of Rs. 1,85,00,000/- on 1st April, 2011 which was paid by M/s Dawn Infrastructure Pvt. Ltd. on behalf of the assessee company. The assessee has credited amount in the account of M/s Dawn Infrastructure Pvt. Ltd. by journal entry on 27th June 2011 and 13th June, 2017 respectively. We have also perused the copy of ledger account of M/s Dawn Infrastructure Pvt. Ltd. placed at page 33 of the paper book and it is noticed that the assessee has repaid the amount to M/s Dawn Infrastructure Pvt. Ltd. by banking channel on 26th March, 2013 and 27th March 2013 respectively. Vide submission dated 19/06/2018 before the AO, the assessee explained that amount was payable on account of joint venture expenses to M/s Sampada Chemicals Ltd and also submitted by referring the decision of Hon'ble High Court in the case of Triumph International Finance (India) Ltd that all the transactions were bonafide and there was no evasion of tax. The Id. Counsel has also referred the decision of CIT vs. Noida Toll Bridge Co. Ltd [2004] 139 Taxman 115 (Delhi) wherein it held that since there was no payment in cash either by assessee company or in its behalf it could not be said

that there was violation of section 269SS of the Act. We have perused the decision of Co-ordinate Bench decision in case of Ramchandra Agarwal (HUF) (supra) wherein the decision of Hon'ble Mumbai High Court in the case of CIT vs. Triumph International Finance (India) Ltd. (345 ITR 270) was considered. In that case Mrs. Veena Agarwal wife of karta makes payment the M/s VR Steel Traders on behalf of the assessee M/s Ramchandra Agarwal (HUF) the assessee passed a journal entry in its books of account by crediting the account of Mrs. Veena Agarwal and debiting the account of M/s V. R. Steel Traders. It is held that revenue has not shown that transaction was not genuine and bonafide. The Co-ordinate Bench also referred that in the decision of CIT vs. Triumph International Finance (India) Ltd (345 ITR 270), the Hon'ble Bombay High Court has also taken note of the fact that the revenue has not shown that the transaction was not bona fide transactions and were made with a view to evade tax and accordingly, held that the explanation given by the assessee before the High Court about the adjustment of amount due from M/s Investment Trust of India as a reasonable cause. The relevant extract of the decision of the Co-ordinate Bench in the case of Ramchandra Agarwal (HUF) (supra) is reproduced as under:-

"4. We heard the parties and perused the record. We notice that the Ld CIT(A) has placed heavy reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Triumph International Finance (India) Ltd (345 ITR 270) to conclude that the loan taken by way of journal entries would violate the provisions of sec. 269SS warranting levy of penalty u/s 271D of the Act. The facts in the above said case are that the assessee before the Hon'ble High Court took a loan of Rs.4.29 crores from M/s Investment Trust of India. The assessee was in the business of shares, stock broking, investment etc. The assessee transferred shares having a value of Rs.4.28 crores to M/s Investment Trust of India. Instead of receiving the sale consideration of RS.4.28 crores and repaying the loan of Rs.4.29 crores separately, the assessee adjusted the loan account with the amount due from M/s Investment Trust of India by passing a

journal entry. Under these set of facts, the Hon'ble High Court held that the repayment of loan by passing a journal entry attracts the provisions of sec. 271E, since it was not the recognized method of repayment of loan prescribed u/s 2697 of the Act. At the same time, the explanation of the assessee was considered to be a reasonable cause by the High Court.

5. In the instant case, Mrs. Veena Agarwal has directly paid the cheque to M/S V.R Steel Traders on behalf of the assessee. In our view, when Mrs. Veena Agarwal makes the payment on behalf of the assessee, the same should be construed as payment made by the assessee to M/S V.R. Steel Traders and hence on that count, we are of the view that the provisions of sec. 269SS should not get attracted. The Ld A.R also pointed out that such kind of making payment of cheques by a person on behalf of other person is quite common practice in the trade circulars. However, it is not clear from the record as to whether the cheque issued by Mrs. Veena Agarwal is an account payee cheque or not. When this was pointed out, the d A.R submitted that the cheque was an account payee cheque only, but he could not immediately substantiate the same. However, the Ld A.R submitted that Mrs. Veena Agarwal is a partner In M/s V.R Steel Traders and hence she paid the cheque directly to that firm instead of giving the cheque to the assessee and in turn, the assessee giving the cheque to the firm. He further submitted that the Hon'ble Bombay High Court in the case of Triumph International Finance (I) Ltd (supra) has also taken note of the fact that the revenue has not shown that the transactions were not bonafide transactions and were made with a view to evade tax and accordingly held that the explanations given by the assessee before the High Court about the adjustment of amount due from M/s Investment Trust of India as a reasonable cause. The Ld A.R submitted that the revenue, in the instant case, has not shown that the transaction was not genuine and was made with a view to evade tax.

6. We find merit in the submissions of Ld A.R. We have already held that the direct payment of cheque on behalf of the assessee may not amount to violation of the provisions of sec. 269SS of the Act. Even otherwise, the explanation of the assessee, in the facts and circumstances of the case would amount to a reasonable cause; since the revenue has not shown that the transaction was not genuine and was made with a view to evade tax. Accordingly, we set aside the order of Ld CIT(A) and direct the JCIT to delete the impugned penalty.”

8. In the case of the assessee the ITAT Mumbai vide ITA No. 1676/Mum/2020 for A.Y 2012-13 dated 21.02.2002 has deleted the addition made by the AO of Rs. 1,85,00,000/- by treating the impugned transactions as genuine and bonafide. The AO has not brought any material on record to prove that action of the sister concern of the assessee of making payment on behalf of the assessee on account of joint venture expenses to M/s Sampada Chemicals Ltd was not genuine and bonafide. The AO had also not established that there was no reasonable cause to make adjustment within the group concern of the assessee and there was any evasion of tax as discussed supra in this order. In view of the above facts and after following the decision of the Co-ordinate Bench in the case of Ramchandra Agarwal as supra, we consider that the case of the assessee is squarely covered by that decision. Therefore, we do not find any infirmity in the decision of the Id. CIT(A) and the Id. CIT(A) has considered the issue in right perspective and rightly deleted the impugned penalty. Therefore, all the grounds of appeal of revenue are dismissed.

In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court 05.10.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 05.10.2023

*Ganesh Kumar, PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.

3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)

आयकरअपीलीयअधिकरण/ ITAT, Bench, Mumbai.