

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.7642/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11)

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आयकर अपील सं/ I.T.A. No.7651/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11)

DCIT, Central, Circle-8(2) 6 th Floor, Room No. 658, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. White Feather Films Ltd. SVP Nagar, MHADA Bungalow No. 91, Four Bungalow, Andheri West, Mumbai-400053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW4428R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri K. Gopal a/w M/s. Neha Paranjpe
Revenue by:	Shri Nayanjyoti Nath (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 05/02/2024
घोषणा की तारीख /Date of Pronouncement: 15/02/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai dated 20.09.2016 for the assessment year 2010-11 against the penalty confirmed by Addl. Commissioner of Income Tax (AO) u/s 271E/271D of the Income Tax Act, 1961 (hereinafter "the Act").

2. Facts of the case as noted by Ld. CIT(A) is that the assessee filed its return of income on 06.10.2010. And the case was selected for scrutiny. Subsequently, assessment was completed on 28.03.2013 determining the total income of Rs.(-) 2,62,73,380/-. Thereafter, penalty was imposed in respect of two sets of transactions by which



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the assessee has accepted/squared up loans by passing journal entries in the books. Details are discussed in the following paras:-

3. The first set of transactions involved loans aggregating to Rs.1,43,00,000/-. The assessee had received loan aggregating to by way of **account payee cheques** from the following parties: -

Name of the Lender	Amount (Rs.)
Mr Rakesh Sarin	30,00,000
Mrs Renu Sarin	32,00,000
Rakesh Sarin HUF	27,00,000
Mr. Akshay Sarin	18,00,000
Akshay Mercantile Pvt. Ltd	10,00,000
B. R. Sarin HUF	5,00,000
Akshay Communication Pvt. Ltd	15,00,000
Dhanabakkam Enterprises	6,00,000
	1,43,00,000

Hereinafter, the eight (8) persons mentioned above will be collectively referred to as the '*original creditors of Sarin Group*'. During the previous year 2009-10, consequent to a family arrangement, the credit balances in the credit of the '*original creditors of Sarin group*' in the books of accounts of the assessee were transferred/assigned to the account of two other persons viz., [*Ashna Sarin (Rs.1,37,00,000/- and Akshay Sarin HUF (6,00,000/-)*], by passing Journal Entries in the books of the assessee company (*hereinafter Ashna Sarin and Akshay Sarin HUF will be referred to as the 'new creditors Sarin Group'*). The second set of transactions involve loans aggregating to Rs.1,00,00,000/-. The assessee took the following loans in the normal course of its business: -

Ashna Sarin	60,00,000
Akshay Sarin HUF	20,00,000
Dhanabakkam Enterprises	20,00,000
	1,00,00,000



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4. During the previous year, the loans were squared off by passing journal entries in the books of the assessee, (*the accounts of the loan creditors were debited and the account of M/s. Eros Multimedia was credited*). Thus, in all total loan Rs.2,43,00,000/- was repaid by passing Journal Entries during the previous year 2009-10.

5. Taking note of the above two (2) transactions, the Add. CIT initiated the penalty proceedings u/s 271D of the Act regarding acceptance/assigning of loan of Rs.1.43 cr from the '*new creditors*' in contravention of section 269SS of the Act; and initiated penalty proceedings u/s 271E of the Act for repayment/squaring off of loan of Rs.2.43 cr in contravention to section 269T of the Act. Thereafter, the Ld. Add. CIT in the penalty order, cited the decision of the Hon'ble Bombay High Court in the case of M/s. Triumph International Finance (I) Ltd, 22 Taxman 138 and held that accepting/repaying the loans by passing journal entry entails contravention of section 269SS/269T of the Act and levied penalty of Rs.1.43 cr u/s 271D of the Act and Rs.2.43 cr u/s 271E of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete both the penalty finding that the AO neither in the assessment order nor in the penalty orders made any finding to the effect that the acceptance/repayment of loans/deposit were made with a view to evade tax and the transactions were malafide. The Ld. CIT(A) found force in the contention of assessee that there was *reasonable cause* for non-levy of penalty and taking note of the facts and circumstances of the case, he noted that the loans were taken of Rs 1.43 cr in the first place through account payee cheques, which were transferred/assigned



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from the original creditor (*referred to in the first set of transaction supra who all belongs to Sarin family*) to other members of Sarin family (*Ashna Sarin Rs. 1.37 cr and Akshay Sarin HUF Rs.6 Lakhs total Rs.1.43 cr new creditors*) by passing necessary journal entries in the books of assessee does not warrant levy of penalty u/s 271D of the Act. According to Ld. CIT(A) loan of Rs.1.43 cr was received from original creditors were through “*account payee cheque*” and the assessee could have returned it back to them (*original creditors*) and they in-turn could have transferred it to ‘*new creditor*’ and again they could have given to assessee, which exercise would have been an empty formality; and the Ld. CIT(A) by relying on the ratio of Hon’ble High Court in M/s. Triumph International Finance (I) Ltd (*supra*) was of the view that there was *reasonable cause* for non-levy of penalty for contravention of section 269SS u/s 271D of the Act and directed deletion of Rs.1.43 cr.

6. Similarly the Ld. CIT(A) found reasonable cause in non-levy of penalty u/s 271E of the Act in respect of journal entry squaring off the loan of Rs.2.43 cr by passing necessary journal entry in the books. As noted in the facts of the case, (*refer first set of transaction*) loan was taken from original creditors to the tune of Rs.1.43 cr, which was in-turn transferred/assigned to new creditors Ashna Sarin Rs.1.37 cr and Akshay Sarin HUF of Rs.6 Lakh. And then assessee took loan in this year to the tune of Rs.1 cr (*refer second set-of transaction*) [from Ashna Sarin to the tune of Rs.60 Lakh, Akshay Sarin HUF to the tune of Rs.20 Lakhs & Dhanabkkan Enterprises to the tune of Rs.20 Lakh (new loan totaling Rs.1 cr)]. Thus, total outstanding loan to these three



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persons were Rs.2.43 cr. The assessee is a film producer, and made two movies named 'Pankh' and 'TGIB' which were sold to M/s. Eros Multimedia Ltd, which party (buyer of movies) agreed to take over the loans and liabilities of assessee and in that process paid the same by account payee cheque to Ashna Sarin, Akshay Sarin HUF & Dhanabakkam Enterprises; and since M/s. Eros Multimedia Ltd had directly paid/settled the outstanding loan from the above three (3) lenders at the request of assessee, the payment entries were passed in the books of assessee by way of journal entries (*The accounts of the loan creditors were debited and the account of M/s. Eros Multimedia Ltd was credited*) Thus, in all the journal entries passed was to the tune of Rs.2.43 cr to show that the outstanding loan of Rs.2.43 was squared off by passing journal entries. The Ld. CIT(A) noted that the AO in the assessment order or penalty order has not found that these transactions made by assessee was with intend to evade tax or with a malafide intention; and that no cash transaction was involved in it; and that it would be an empty formality for assessee receiving the sale consideration from M/s. Eros Multimedia Ltd and thereafter, squaring up the loan directly with the three (3) lenders. Therefore, he deleted the penalty levied u/s 271E of the Act. Aggrieved by the action of Ld. CIT(A) deleting penalty u/s 271D & 271E of the Act, the revenue is before us.

7. We have heard both parties and perused the records. The facts aforesaid are not disputed by the revenue. In such a scenario, the same is not repeated to avoid repetition and for the sake of brevity. Penalty u/s 271D of the Act was levied for accepting/receiving the



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loan of Rs.1.43 cr (from new creditors of Sarin Group) by passing necessary journal entries in the books. We agree with the Ld. CIT(A) that after the decision of Hon'ble Bombay High Court in the case of M/s. Triumph International Finance (I) Ltd (supra), it is no longer res-integra that the acceptance/repayment of loan by journal entries entails contravention of section 269SS & 269T of the Act and would attract penalty u/s 271D & 271E of the Act. We also note that assessee had accepted through *account payee cheques* Rs.1.43 cr from eight (8) of family members of Sarin Group; and pursuant to a family arrangement had re-assigned the loans to new two (2) creditors by passing journal entries in the books, which the Ld. CIT(A) has termed as an empty formality [*i.e. assessee re-paying the loans of eight (8) old creditors by account payee cheque and then they giving it to two new creditors who will in turn give it to assessee*]. Therefore, the Ld. CIT(A) rightly taking a cue from the decision of the Hon'ble High Court in M/s. Triumph International Finance (I) Ltd (supra) found that there was reasonable cause (*in term of section 273B of the Act*) for non-levy of penalty u/s 271D of the Act. Likewise, the assessee had additionally accepted Rs.1 cr from three parties (*including the two new creditors to whom loans were re-assigned Rs.1.43 cr*) and thus total amount credited in their names was Rs.2.43 cr, which was repaid/squaring off by M/s. Eros Multimedia Ltd (*as sale consideration for two movies of assessee, wherein it was agreed by Ms. Eros Multitrade to take over the outstanding loan and liability of assessee and they paid/settled the three creditors*) and consequently, assessee passed necessary journal entries squaring off the loans (*The account of the loan creditors were*



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debited and the account of M/s. Eros Multimedia Ltd was credited).

Thus, it can be noted that assessee could have received the sale consideration of two movies from M/s. Eros Multitrade and thereafter, give account cheque to three creditors and squared off the loan with them, instead, sale consideration was disbursed by M/s. Eros Multitrade to three creditors. Therefore, Ld. CIT(A) opined that it would be an empty formality i.e. squaring off/repayment of loan of Rs.2.43 cr to three creditors. Therefore, in the facts and circumstances of the case, the Ld. CIT(A) rightly held that there was reasonable cause for non-levy of penalty u/s 271E of the Act which is line with the decision of the Hon'ble Bombay High Court in the case of M/s. Triumph International Finance (I) Ltd (supra). Therefore, we confirm the impugned action of Ld. CIT(A) on the very same reasoning given by Ld. CIT(A); and in addition note that the journal entries in question has been passed by assessee in AY. 2010-11 and note that there were several decisions/case laws of Hon'ble High Courts/Tribunal holding that passing of journal entries would not violate section 269SS or section 269T of the Act and therefore, would not attract penalty u/s 271D/271E of the Act; and only after the Hon'ble Bombay High Court passed the order in M/s. Triumph International Finance (I) Ltd (supra) on 12.06.2012, it was held that journal entries passed to accept/repaying the loan would contravene section 269SS/271D of the Act. However, since the action of assessee [passing of journal entries] was prior to the order of Hon'ble High Court in M/s. Triumph International Finance (I) Ltd (supra), therefore the action of assessee in AY. 2010-11 to pass journal entries to accept/assign/repaying loan or



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deposit ought to be considered as reasonable cause for non-levy of penalty u/s 273B of the Act and for that we rely on the decision of Hon'ble Bombay High Court in the case of Ajitnath Hi-Tech Builders (P.) Ltd (Income Tax Appeal No.171 of 2015 order dated 06.02.2018), wherein their Lordships held as under:-

"(h) In any event, as rightly pointed out by Mr. Sridharan, learned Senior Counsel for the respondents assesses, the order of this Court in Triumph International Finance (supra) was rendered on 12th June, 2012. This, was in an appeal filed by the Revenue from the order of the Tribunal dated 29th January, 2008, which had held that deposits/loans received through journal entries do not fall with the mischief of Section 269SS of the Act, so as to invite penalty under Section 271D of the Act. This, the Tribunal did by following its earlier orders in the case of V.N. Parekh Ltd. and Ketan Parekh as indicated in the order of this Court in Triumph International Finance (supra). Our attention was also invited to numerous reported decisions of the Tribunal in the cases of Sunflower Builders Vs. Dy. CIT, 1997 (61) ITD (Pune 227, Asst. CIT Vs. Ruchika Chemicals & Investment P) Ltd. 2004 (88) TTJ (Delhi) 85 and Asst CIT Vs. Lala Murari La I & Sons, 2004(2) SOT (Luck) 543 wherein it has been held journal entries in the book of accounts indicating deposit/ loans will not fall foul of Section 269SS of the Besides, the Delhi High Court in Commissioner of Income Tax ITA No.6607/Mum/2016 & 6609/Mum/2016 National Standard India Ltd., Noida Toll Bridge Co. Ltd. 262 ITR 260 inter alia held that payment of Rs.4.85 crores made by the assesses by a journal entry in its books of account by crediting the account of



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ILFS, would not fall foul of Section 269SS of the Act. This particularly in the absence of any payment being made in cash.

(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of Triumph International (Supra) and decision of V.H. Parekh (P) Ltd.. Ketan V. Parekh, Sunflower Builders (supra), Ruchika Chemicals (supra). La/a Murari La/ (supra) and the decision of the Delhi High Court in Noida Toll Bridge Co. Ltd, (supra) were holding the field. Thus, not in breach of Section 269SS of the Act. In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in Triumph International Finance (supra) has only clarified/stated the position as always existing in law, the receiving of deposits/ loans through journal entries would certainly be hit by Section 269SS of the Act Nevertheless, prior to the decision of this Court in Triumph International Finance (supra), there was reasonable cause for respondents to receive deposit/loan through journal entries. This non- compliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act"

8. As noticed supra the transactions, in the instant cases, were undertaken during the period from 01-04-2009 to 31.03.2010, i.e., much prior to the decision dated 12-06-2012 rendered by Hon'ble Bombay High Court in the case M/s. Triumph International Finance (I)



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Ltd (supra). Hence the transactions undertaken through journal entries prior to 12-06-2012 shall constitute reasonable cause within the meaning of sec.273B of the Act.

9. In view of the foregoing discussions, we are of the view that in any case, these transactions have been undertaken prior to 12.06.2012, i.e., the date on which the decision in the case of M/s. Triumph International finance (supra) holding that the journal entries are hit by the provisions of sec. 269SS/269T of the Act. The Hon'ble Bombay High Court, in the case of Ajitnath Hi-tech Builders P Ltd (supra) has held that the transactions of loans undertaken through journal entries on the strength of the decision rendered by Hon'ble Delhi High Court and Tribunals, prior to the ruling given by it in the case of M/s.Triumph International finance (supra) is covered by "reasonable cause" within the meaning of sec.273B of the Act. Hence, we sustain the view taken by Ld CIT(A) on the aforesaid additional reason also. Accordingly, we dismiss the appeals of the revenue.

10. In the result, the appeals of the revenue stands dismissed.

Order pronounced in the open court on this 15/02/2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 15/02/2024.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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- 6.

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