

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE [VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND

SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

I.T.A.No.1168/PUN./2023 [E-APPEAL]
Assessment Year 2013-2014

The DCIT, Kendriya Rajaswa Bhawan, Gadkari Chowk, Old Agra Road, Nashik – 422 022 Maharashtra.	vs.	Baphana Jewellers Pvt. Ltd., 4, Suyojit Sankul, Sharanpur Road, Tilak Wadi Corner, Nasik. PIN – 422 002. Maharashtra. PAN AABCB9191P
(Appellant)		(Respondent)

For Revenue :	Shri Ramnath P Murkude
For Assessee :	-None-

Date of Hearing :	29.02.2024
Date of Pronouncement :	08.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal for assessment year 2013-14, arises against the CIT(A), Pune-12, Pune's Din and Order No. ITBA/APL/S/250/2023-24/1056030926(1), dated 13.09.2023, involving proceedings u/s.271D of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. He is accordingly proceeded ex-parte.

2. The Revenue's sole substantive grievance raised in the instant appeal challenges correctness of the CIT(A)'s findings reversing the Assessing Officer's action levying sec.271D penalty on the assessee at Rs.76,08,281/-. Mr. Murkude vehemently supported the Assessing Officer's findings in his penalty order dated

29.11.2016 that the assessee could not show any reasonable cause for having violated the provisions of sec.269SS of the Act so as to get the impugned penal action dropped.

3. We find no merit in the Revenue's instant sole substantive grievance. There is hardly any dispute that the impugned penalty provision sec.271D comes into play in case an assessee "takes or accepts any loan or deposit", as the case may be, in contravention with the provisions of sec.269SS of the Act prescribing the specified mode(s) of banking channel and electronic means therein. There could further no quarrel that the legislature has provided for compliance thereof so as to curb ploughing of unaccounted cash/money(ies) in the books through bogus deposits or loan(s) entries. The facts in the instant case however speak otherwise. The assessee is undisputedly engaged in jewellery business. It had in fact taken "metal deposits" i.e., gold or silver in physical form followed by the corresponding journal entry(ies) made in the books of account terming them as "unsecured loans". The same makes it crystal clear that merely by making the foregoing journal entries, it could not be held to have violated the provisions of sec.269SS by accepting the precious metal commodities in physical form than in the specified mode(s). That being the case, we conclude that the CIT(A) has rightly accepted the assessee's arguments questioning correctness of the impugned sec.271D penalty of Rs.76,08,281/- levied by the Assessing Officer. The

Revenue fails in it's sole substantive arguments in very terms.

Ordered accordingly.

4. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 08.03.2024.

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 08th March, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A)-12, Pune.
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.

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(Appellant)		(Respondent)

For Revenue :	Shri Ramnath P Murkude
For Assessee :	-None-

Date of Hearing :	29.02.2024
Date of Pronouncement :	08.03.2024

CONSENT ORDER

PER G. D. PADMAHSHALI, AM:

After going through the draft order of my learned Judicial Member brother, I have had the benefit of pursuing the opinion rendered by him and I am in complete agreement with the reasoning as well as conclusion drawn therein. However, having regard to the importance of the question involved in the instant appeal, it would be appropriate to add few words of mine independently hereinafter.

2. The present dispute revolves around levy of penalty u/s 271D for violation of provisions of section 269SS of the Act.

3. Undisputedly, the appellant assessee has accepted metal deposit exceeding the ceiling limit prescribed u/s 269SS of the Act

from 6 persons total amounting to Rs.76,08,281/- which is credited in the books of accounts against the metal deposit unsecured loan.

This, in the view of the Revenue, triggered the contravention of section 269SS of the Act, the provisions of which reads as under;

“269SS. No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if,—

- (a) the amount of such **loan or deposit** or specified sum or the aggregate amount of such loan, deposit and specified sum; or*
- (b)”*

[Emphasis supplied]

4. A plain reading of aforesaid section clearly reveals that if the amount of ‘loan or deposit’ or specified sum, or aggregate amount of such loan or deposit and specified sum exceeding the ceiling limit is accepted then it would amount to violation of the provisions of section 269SS of the Act. The clause (a) of section 269SS talks about two elements (1) loans or deposits (2) specified sum. Now, coming to Explanation 269SS sub-clause (iii) which defines loan or deposit for the purpose of this section means **‘loans or deposits of money’**.

5. Admittedly, the present case did neither is for loans or deposits of money nor specified sum, as these both terms refers to sum of money as against the present case wherein the appellant assessee accepted loans/deposit of metal which did neither fall in category (1) i.e. loans or deposits of money nor in category (2) specified sum i.e. to say the provisions of section 269SS of the Act

by application of stricter interpretation laid in 'Commissioner of Customs v/s Dilip Kumar' reported in 9 SCC 1 (SC) do not extend to a transaction beyond (1) loans or deposits of money (2) specified sum.

6. Since in the instant case, the appellant assessee accepted the metal deposit not falling in any of the former category hence outside the ambit of contravention of provisions of section 269SS consequently de-horse from attracting penalty u/s 271D of the Act.

7. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 08.03.2024.

Sd/ -
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Sd/-
[GD PADMAHSHALI]
ACCOUNTANT MEMBER

Pune, Dated:08th March, 2024

Sujeet

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