

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'A': NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.4550/DEL/2017  
[Assessment Year: 1993-94]**

DCIT, Circle-3(2), R. No.380B, C.R. Building, I.P. Estate, New Delhi-110002	Vs	M/s Asian Consolidated Industries Ltd. 96 <sup>th</sup> Mile Stone, Delhi-Jaipur Highway, Village , Bawal, Rewari, Haryana
		<b>PAN-AAACA5887A</b>
Revenue		Assessee

Revenue by	Ms. Sunita Kumari, CIT-DR and Sh. Kanv Bali, Sr.DR
Assessee by	Sh. Ved Jain, Adv., Ms. Supriya Mehta, CA & Sh. Amit Sharma, CA

<b>Date of Hearing</b>	<b>07.05.2024</b>
<b>Date of Pronouncement</b>	<b>.05.2024</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the Revenue is directed against the order of learned CIT(A)-1, New Delhi, dated 07.04.2017 pertaining to Assessment Year 1993-94.

2. The grounds of appeal raised by the assessee reads as under:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting penalty of Rs.1,75,19,799/- imposed u/s 271D of the Income Tax Act, 1961.*

3. Brief facts of the case: During the course of assessment proceedings set aside before the ITO Ward-3(3)/ DCIT, Circle-3(2), New Delhi, the AO found that the assessee had accepted deposits amounting to Rs.1,75,19,798.82/- (as per the details mentioned on page 1 & 2 of penalty order u/s. 271D dated 29.09.2016) from M/s Trans Asia Packaging Ltd. (TAPL) by modes other than account payee cheques or account payee draft, thus, violating the provisions of section 269SS of the I.T. Act, 1961. He, therefore, referred the matter to the Additional Commissioner of Income tax Range-3, Delhi for considering the case for levy of penalty u/s. 271D as per law. The Addl. CIT, Range-3, Delhi issued a show cause dated 17.08.2016 and 26.08.2016 in this regard. In reply the assessee submitted that the assessee company is a limited company, incorporated under the Companies Act 1956 and the company during the period under consideration was engaged in the business of manufacturing of Flexible Packaging Laminates, Open Top Sanitary Cans and General line Metal Cans. Further, it was submitted that by virtue of the orders of Hon'ble Punjab & Haryana High Court at Chandigarh M/s Trans Asia Packaging Ltd. (TAPL) was merged/amalgamated with the assessee company M/s Asian Consolidated Industries Ltd. w.e.f 01.04.1992 and from the above date it became an unit of above mentioned amalgamated company.

3.1 The assessee company explained before the AO that since TAPL had amalgamated with the assessee company i.e. M/s Asian Consolidated Industry Ltd. w.e.f 01.04.1992 and as such became one unit and therefore the entries between two units can neither be considered in

violation of Section 269SS nor do they constitute transactions between two independent entities. It further submitted a copy of the account of TAPL in the books of assessee company and claimed that it was not a loan or deposit but was a running/current account incorporating transaction relating to payments against bill, payments by amalgamated company and therefore there was no violation of Section 269SS of the Act. The Addl. CIT did not agree with the contention of the assessee and after discussion and relying upon the decision of ITAT, Bombay 'D' Bench in the case of M/s. Unique Construction vs. DCIT, ITA No.7062 & 7063/Bom/ 1992 AY 1989-90, 17th May 1993 (1995) 52 TTJ (Bom) and levied a penalty u/s 271D amounting to Rs. 1,75,19,799/-.

4. Aggrieved with the said penalty order, the assessee filed an appeal before the Ld. CIT(A).

5. The Ld. CIT(A), after considering the submissions of the assessee, held that the amount of Rs. 1,22,21,305/- has been transferred by way of JV entries to four associate concerns on behalf of TAPL. Similarly, the other receipts between M/s Trans Asia Packaging Ltd. and M/s Asian Consolidated Industries Ltd. were in the nature of current account transactions as there was no receipt of loan or deposit. Hence, such transactions cannot be treated as receipt of loan or deposits. Further, the CIT(A) also accepted the plea of the assessee about the merger of TAPL with the assessee company and accepted that the transaction between M/s TAPL and the assessee company were the transactions of the two units of single entity and therefore, the transactions cannot be considered as loan or deposit received with two different entities. In this regard, the

Id. CIT(A) also relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Indu Severs and Loss Assessor Pvt. Ltd. and held, that penalty u/s. 271D could not be sustained in this case. Accordingly, he deleted the penalty levied by the AO us 271D amounting to Rs.1,75,19,799/-.

6. Against the above order, the Revenue is in appeal before us.

7. During the appellate proceeding before us, the Id. AR referred to the order dated 23.05.2023 of the Coordinate Bench in the case M/s. Trans Asia Packaging Ltd. (Amalgamation with M/s. Asian Consolidated Industries Ltd.) in ITA No. 4552 & 4557/Del/2017) wherein the Bench of similar facts confirmed the findings of the Id. CIT(A) that the transaction between the TAPL and M/s. Asian Consolidated Industries Ltd. has to be regarded as transaction between two units of the same company due to merger and thus, the transaction between the two companies are out of ambit of Section 269SS of the Act and hence, no penalty can be imposed u/s. 271D of the Act and dismiss the appeal of the Revenue. The relevant finding of the Coordinate Bench is reproduced as under:-

*7. We have perused the penalty order passed under Section 271D and the first appellate order thereon and perused the case records with the assistance of the Id. Sr. DR for the Revenue. The infringement of provision of Section 269SS and ensuing penalty under Section 271D is in question.*

*8. On perusal of the case records, it appears that the assessee company TAPL was a limited company engaged in manufacturing of tin containers and cans etc. By virtue of order of Hon'ble Punjab and Haryana High Court, the assessee company was merged /amalgamated with Asian Consolidated Company Ltd. w.e.f. 01.04.1992 and from that date, became unit of amalgamated company, i.e., Asian Consolidated Industries Ltd. A liquidation petition in the case of amalgamated company, i.e., ACIL was filed by certain creditors and an order was passed by the Hon'ble Punjab and*

*Haryana High Court for winding of the company and a liquidator was appointed w.e.f. 07.01.1999. In this backdrop, the CIT(A) found that the transaction between the TAPL and ACIL has to be regarded as transaction between two units of the same company due to merger and thus transactions between the two companies are out of ambit of Section 269SS of the Act and hence no penalty can be imposed under Section 271D of the Act.*

*9. Without any further delineation, we find that the findings given by the CIT(A) while deleting the penalty withstand the test of reasons and does not call for any modification or interference. Thus, we see no merit in the case of the Revenue.*

*10. In the result, the appeal of the Revenue is dismissed ex-parte.*

*11. For the similar reasons, penalty imposed under Section 271E for default towards repayment in terms of Section 269T of the Act is also without merit in the light of the reasoning provided by the CIT(A). We thus see no merit in imposition of penalty under Section 271E of the Act for similar reasons as challenged in ITA No. 4552/ Del/2017 Assessment Year 1993-94. We thus decline to interfere with the order of the CIT(A).*

*12. In the result, the appeal of the Revenue is dismissed ex-parte.*

*13. In the result, both the captioned appeals of the Revenue are dismissed ex-parte.”*

7.1. The learned Sr. DR for the Revenue relied upon the penalty order.

8. We have carefully considered the rival submissions, the facts of the case and the materials on record. On careful perusal it is seen that the facts in the present case is squarely covered by the decision of the Coordinate Bench in the case M/s. Trans Asia Packaging Ltd. (supra). Therefore, relying upon this decision it is held, that the transaction between the TAPL and M/s. Asian Consolidated Industries Ltd. has to be regarded as transaction between two units of the same company due to merger and thus, the transaction between the two companies are out of ambit of Section 269S of the Act and hence, no penalty can be imposed u/s. 271D of the Act. Accordingly, the decision of the Id. CIT(A) of deleting

the penalty levied amounting to Rs.1,75,19,799/- is hereby confirmed.  
Ground No.1 of revenue's appeal is dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 21<sup>st</sup> May, 2024.

**Sd/-**  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**

**Dated** 21.05.2024.

*SJK*

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi