

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

**MS. PADMAVATHY S, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1133/MUM/2024
(Assessment Year: 2016-17)**

Rajesh Gala

Plot No. 96, Ground Floor, Arudh Niwas,
Hindu Colony Lane No. 3, Hindu Colony,
Dadar (East), Mumbai - 400014
[PAN: ACEPG8537A]

..... **Appellant**

**Commissioner of Income-Tax
(Appeals),**

National Faceless Appeal Center,
Room No. 245-A, North Block,
New Delhi - 110001

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Shashank Mehta
For the Respondent/Department : Shri Nayanjyoti Nath

Date

Conclusion of hearing : 24.07.2024
Pronouncement of order : 31.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 12/01/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Order, dated 27/06/2019, passed by the Addl. Commissioner of Income Tax Range – 7(3), Mumbai, under Section 271D of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The appellant has raised following grounds of appeal :

"1. *The Learned Addl. Commissioner and National Faceless Appeal Centre, erred on facts, in law and under the circumstances in*

levying the penalty u/s 271D of Income Tax Act, 1961 even when such penalty proceedings were not initiated in the assessment order passed for the concerned assessment year.

2. *The Learned Addl. Commissioner and National Faceless Appeal Centre, further erred on facts, in law and under the circumstances in levying penalty u/s 271D of Income Tax Act, 1961 because the transaction does not attract the provision of Sec.269SS of Income Tax Act, 1961 and even otherwise it is covered by Sec.273B of Income Tax Act, 1961.*
3. *The appellant respectfully submits that due to prevalence of reasonable cause, the funds were given to him in cash, and the nature of transaction between parties is not of loans because the relation between the parties is not of a lender and a borrower as understood in a loan transaction and that arrangements were required to be made between the parties in this way so as to meet business exigencies of the appellants group. Hence the provision of Sec.269SS is not attracted to this transaction.*
4. *Without prejudice, if it is held that the transaction between parties is loan transaction, then the transacting parties were prevented by reasonable cause as provided in Sec.273B of Income Tax Act, 1961.*
5. *Without prejudice, the amount given as loan has already been offered to tax by the by the giver group entity hence should not be subject to tax or penalty again.*
6. *The Learned Addl. Commissioner and National Faceless Appeal Centre has not appreciated the fact that the assessee is entitled for beneficial legislature.*
7. *The Learned Addl. Commissioner and National Faceless Appeal Centre has not followed hierarchy of jurisprudence.*
8. *The Learned Addl. Commissioner and National Faceless Appeal Centre has passed the order in violation of principles of natural justice.*
9. *The ground of appeal is without prejudice to the other.*
10. *The appellant craves, leave to add, alter, amend or vary and/or withdraw any or all of the aforesaid grounds of Appeal or at time of hearing of the above appeal."*

3. All the grounds raised in the present appeal pertain to levy of penalty of INR 2,96,60,000/- under Section 271D of the Act on account of failure on the part of the Appellant to comply with the requirements of the Section 269SS of the Act while undertaking transaction in cash. The Appellant herein is an individual holding the position of director/partner/proprietor in the following entities:

Name of the Company	Designation	Type of Business
M/s Pramanik Retail Pvt. Ltd (PRL)	Director	Retail Trade in Ready Made Garments having shops at Matunga & Dadar
M/s Palai Developers Pvt. Ltd. (PDPL)	Director	Builder & Developer
M/s N.D. Developers (ND)	Partner	Builder & Developer
M/s Dhanji Developers (DD) (Prop. Dhanji Gala)	Proprietor	Builder & Developer

4. It is the case of the Appellant that the various entities in which the Appellant was holding position as director/partner were going through financial crisis and therefore, the same proceeds of M/s. Pramanik Retail Pvt. Ltd. were utilized for the business for the Appellant and his group entities. In order to facilitate same sale proceeds of M/s. Pramanik Retail Pvt. Ltd. were shown loan to the director as otherwise it would not have been possible for the Appellant to make payments to creditors, repay outstanding loan, service debt liabilities and also to make available cash for day to day operation of said group. In the aforesaid peculiar facts and circumstances there was a technical default in complying with the provision Section 269SS of the Act. In view of the aforesaid, it was contended on behalf of the Appellant that the Appellant had reasonable cause for not complying with the provision of the 269SS of the Act and therefore, no penalty under section 271D of the Act could have been levied on the Appellant.
5. Both the sides agreed that identical issue had come up for consideration before the Tribunal in the case of the Appellant for

the Assessment years 2014-2015, 2015-2016 and 2017-2018. Vide common order dated 01/07/2024 passed in ITA No. 1154, 1156 & 1157/MUM/2024 the Tribunal had deleted the penalty levied under Section 271D of the Act holding as under:

- "2. It emerges at the outset with the able assistance coming from both the sides that assessee's identical sole substantive grievance canvassed herein challenges correctness of the learned lower authorities action imposing 271D penalty (ies) of Rs. 2 lakhs, Rs. 8,30,000/- and Rs. 77,80,000/- assessment year-wise, respectively.*
- 3. We deem it appropriate to observe herein that the assessee had indeed availed cash loan(s) from the related party M/s. Pramanik Retail Pvt. Ltd. wherein he is a director. Learned DR vehemently supported both the lower authorities action that the above varying cash loans have violated corresponding statutory provision i.e. section 269SS of the Act thereby making it a fit case to impose the consequential section 271D penalty.*
- 4. We find no reason to express our agreement with learned DR's foregoing vehement contentions. A combined perusal of these case files reveals that the assessee had indeed submitted during the course of penalty proceedings itself that the above entity M/s. Pramanik Retail Pvt. Ltd. and group concerns had been undergoing turbulent times and its sundry creditors had stopped supplying the corresponding raw material in regular business activities. The assessee explained before the Assessing Officer that this made M/s. Pramanik Retail Pvt. Ltd., to deposit its cash sales in the bank account so as to avoid adjustment(s) thereof against various outstanding dues. Learned counsel submits that all these developments only formed the main reason for the assessee to manage day-to-day affairs of Pramanik Retail Pvt. Ltd. by taking cash loans, which have resulted in levy of penalty(ies) forming subject matter of adjudication in the three assessment years before us.*
- 5. We find merit in the assessee's arguments challenging the impugned section 271D penalties as neither the Assessing Officer nor the learned Commissioner herein could rebut foregoing factual averments indicating reasons of assessee*

have availed cash entries/loan from Pramanik Retail Pvt. Limited. Even the "lead" penalty order dated 27.06.2019 herein for A.Y. 2014-15 is fair enough in para 2 that M/s. Pramanik group had indeed overdrawn from its account in the corresponding time period. These clinching facts duly support the assessee's foregoing plea of financial hardship faced by group concerns wherein he is a director (supra). We accordingly quote section 273B of the Act to conclude that there was a "reasonable cause for the assessee for not having complied with the rigor of section 269SS of the Act in availing the impugned cash loans herein. We accordingly treat it is a fit case to delete the impugned section 271D consequently penalty (ies) in all these three assessment years. The assessee's identical sole substantive ground herein succeeds in very terms. Ordered accordingly.

6. *These assessee's three appeals are allowed in above terms."*

6. It is admitted position there is no change in facts and circumstances during the relevant previous year, therefore, respectfully following the above decision of the Tribunal in the case Appellant, we delete the penalty of INR 2,96,60,000/- levied under section 271D of the Act for the Assessment Year 2016-17.
7. In result, appeal preferred by the Assessee is allowed.

Order pronounced on 31.07.2024.

Sd/-
(Ms. Padmavathy S)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.07.2024
Poonam Mirashi,
Stenographer

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai