

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAURI, ACCOUNTANT MEMBER**

**ITA No.1102/Mum/2024
(Assessment Year :2012-13)**

Abbas Ismail Contractor B-2, Mamta Apartment Appasaheb Marathe Marg Prabhadevi Mumbai-400 025	Vs.	ACIT, Circle 22(1) Mumbai
PAN/GIR No.ADJPC0925A		
(Appellant)	..	(Respondent)

Assessee by	Shri Vinod Kumar Bindal
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	28/08/2024
Date of Pronouncement	29/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 24/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2012-13.

2. In various grounds of appeal assessee has challenged the validity of assessment and addition of Rs.86,00,000/- made by the ld. AO u/s. 269SS on the basis of entries in news papers / diaries etc.,

3. The brief facts are that assessee has filed its return of income for A.Y.2012-13 on 17/09/2012 declaring total income of Rs.21,12,534/-. Thereafter, assessment order completed u/s. 143(3) vide order dated 27/03/2015 accepting the returned income. The case was reopened u/s.147 after recording the reasons vide notice u/s.148 on 28/03/2019 on the ground that certain documents were found and seized on the premises of M/s. Evergreen Enterprises, wherein it was found that several individuals have borrowed cash loan from and through M/s. Evergreen Enterprises and assessee was one such borrower who has borrowed cash loan of Rs.86,00,000/-. The ld. AO instead of making any addition u/s.68 or 69A has added the sum u/s.269SS after observing as under:-

“9 All documentary evidences, findings and the fact that Shri Nilesh Bharani avoiding giving statements clearly confirm the fact that the assessee has taken cash loan from/through Nilesh Bharani/Evergreen Enterprises. Section 269SS provides that any loan or deposit or any specified sum shall not be taken or accepted from any other person otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account if, (a) the amount of such loan or deposit or any specified sum or the aggregate amount of such loan and deposit or any specified sum, or (b) on the date of taking or accepting such loan or deposit or any specified sum, any loan or deposit or any specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not) and the amount or the aggregate amount remaining unpaid, or (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Thus, it is clear that no person can accept any loan or deposit or any specified sum of Rs 20,000 or more otherwise than by way of an account payee cheque or an account payee draft or use of electronic clearing system through a bank account. The limit of Rs 20,000 will also apply to a case even if on the date of taking or accepting such loan or deposit any specified sum, any loan or deposit any specified sum taken or accepted earlier by such person from such depositor is remaining unpaid and such unpaid amount along with the loan or deposit any specified sum to be accepted, exceeds the aforesaid limit.

10. Thus, the assessee has borrowed cash loan of Rs. 86,00,000/- from/through Nilesh Bharani/Evergreen Enterprises in violation of provisions of section 26985 of the Act. In view of the above, Rs. 86,00,000/- is hereby added to the total income of assessee u/s. 269SS of the Act.

10.1 Penalty proceedings u/s 271D are being initiated separately.

4. Ld. CIT (A) too has confirmed the said addition that assessee has not given any corroborative evidence in support of its claim.

5. We have heard rival submissions and also perused the relevant orders. Here the ld. AO has invoked Section 269SS to make the addition of Rs.86,00,000/- as unexplained cash loan. Section 269SS prohibits of taking any loan or deposit otherwise by account payee cheque or banking system. Nowhere, the Section speaks about making any addition. The violation of Section 269SS entails penalty u/s.271D which provides that if a person takes and accepts any loan or deposit in contravention of provision u/s.269SS, he shall be liable to pay, by way of penalty, the sum equal to loan or deposit so taken or accepted. The only consequence of violation of 269SS is initiation and levy of penalty

u/s.271D. There is no provision for making any addition u/s.269SS. Otherwise also, if ld.AO has initiated penalty u/s. 271D for violation of 269SS, then where is question of making the addition, because if the addition is made u/s.68, that means he is disbelieving the loan and treating it as non-genuine. Only if the cash loan is accepted to be genuine then only the provision of Section 269SS will trigger if the amount of loan accepted in cash is above Rs. 20,000/-. Thus, the whole premise on which the addition has been made is illegal and hence, the entire addition made by the ld.AO is quashed.

6. In the result, appeal of the assessee is allowed.

Order pronounced on 29th August, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 29/08/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai