

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1135/DEL/2024 [A.Y 2013-14]

OTM Jewellery Pvt Ltd
C-4/135, Safdarjung Development Area
Hauz Khas, New Delhi

Vs.

The A.C.I.T
Central Range
Meerut

PAN: AAACO 5115 F

(Applicant)

(Respondent)

Assessee By : Shri Ankur Goel, Adv

Department By : Ms. Anupama Singla, Sr. DR

Date of Hearing : 15.10.2024

Date of Pronouncement : 23.10.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A)-3, Noida dated 23.01.2024 pertaining to A.Y. 2013-14.

2. The solitary substantive grievance of the assessee is the imposition of penalty u/s 271D of the Income-tax Act, 1961 [the Act, for short] on account of loans received by the assessee company by way of journal entries from the directors and their relatives.

3. The representatives of both the sides were heard at length, the case records carefully perused and relevant documentary evidences brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Facts, as culled out from the orders of the authorities below show that a search and seizure operation u/s 132(1) of the Act was carried out on 19.04.2017 in the case of Keshav Lal Group. During the course of search and seizure operations, certain information/ documents belonging to the assessee were found and relying on them, the case was selected u/s 153C of the Act after recording satisfaction.

5. The Assessing Officer noticed that certain salaries and rent had been paid by the assessee company to its directors and promoters totaling to 9 individuals. These amounts had accrued over a period of time and taken as loan by the assessee company by way of journal entries. On the sole premise that these loans have not been received

through banking channel, the Assessing Officer was of the opinion that there has been violation of provisions of section 269SS of the Act and went on to impose penalty u/s 271D of the Act.

6. Aggrieved, the assessee carried the matter before the Id. CIT(A) who confirmed the penalty u/s 271D. The CIT(A) relying on the decision of Hon'ble Bombay High Court in the case of *Ajithnath Hi-Tech Builders Pvt Ltd*(2018) 92 taxmann.com 228 (Bombay) and the hon'ble Allahabad High Court in the case of *Sunil Sagar Co* (2017) 85 taxmann.com 254(All.) concluded that receipt of loan by way of journal entries will tantamount to violation of section 269SS of the Act. The CIT(A) also held that as there was no reasonable cause, benefit of section 273B of the Act cannot be extended to the assessee company.

7. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities. The Id AR of the assessee argued that the AO has wrongly concluded that the loan was received in "cash". The Id AR referred to the ledger of accounts of the 9 creditors to show that the loan entries are journal entries and not cash transaction. The Id AR vehemently argued that the AO does not possess any evidence or materials to show that these transactions were carried out with intention to avoid or evade tax. It was further argued

that the assessee had bonafide belief that such journal entries do not attract provisions of section 269SS as there is no movement of cash and therefore had reasonable cause under section 273B. The ld AR relied upon a catena of decisions as under:

- i) CIT Vs. Apex Finlease Ltd dated 17,.10.2016 Hon'ble Allahabad High Court
- ii) CIT Vs. National Clothing Co. 2014 SCC Online Del 7253
- iii) CIT Vs. Worldwide Township Projects 367 ITR 433
- iv) CIT Vs. Saurabh Enterprises 269 CTR 451 (Allahabad)
- v) CIT Vs. Noida Toll Bridge Co. 262 ITR 260
- vi) DCIT Vs. International Softweb 2016 SCC ITAT 1901
- vii) ACIT Vs. Vardhan Fashion 60 Taxmann.com 407
- viii) ACIT Vs. Ruchika Chemicals and Investment
ITA No, 1466/DEL/1997 dated 18.04.2022
- ix) ITO Vs. Amar Nath Shivrah HUF 1 SOT 346 [Agra]
- x) CIT Vs. Bombay Conductors & Electricals Ltd 173 Taxmann 434
- xi) ACIT Vs. Lala Murari Lal & Sons 2 SOT 543 Lucknow

8. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

9. We have heard the rival submissions and have perused the relevant material on record. It is an admitted position that the assessee company had given salary/rent to the directors/former directors by passing a journal entries in their respective accounts in the books maintained by the assessee company. We also note that the accrued salaries and rent given to these directors/former directors, accumulated over the years, has been transferred through journal entries, as unsecured loan in the accounts of the company. As a corollary, we find that there is no involvement of cash which is accepted as factual position by the CIT(A) also.

10. The Hon'ble Supreme Court in the case of Kum. A.B. Shanthi 255 ITR 258 has held that the object of introducing the provisions of section 269SS of the Act is to ensure that the tax payer is not allowed to give false explanation for his unaccounted money. The question we are called upon to adjudicate is whether the provisions of section 269SS are attracted to the journal entries as it is so in the present case. The hon'ble Delhi High Court in the case of *National Clothing Co (supra)*, following its decision in the case of *Ruchika Chemicals & Investment P Ltd (supra)* and *Worldwide Townships Project Ltd (2014) 367 ITR 433 (Del)* confirmed the law elucidated on 269SS. It upheld the view of the ITAT that though section 269SS provides that no

person shall take or accept loans from any other person otherwise than by account payee cheque or account payee bank draft, the caveat is provided in Clause (iii) of Explanation to section 269SS which clarifies the purport of "loan or deposit" as loan or deposit of "money". When this Explanation is read with the main section it brings to light that only the transactions of loans or deposits which are covered within the ambit of this section are that of "money" and the term 'money', means 'cash'. Thus when loans are accepted vide journal entries, it goes outside the scope of section 269SS.

11. Similarly, the hon'ble Delhi High Court in the case of ***Noida Toll Bridge Co Ltd*** (supra) held that where no payment is made in cash and payment is made by journal entries in the books of account, the provision of section 269SS were not attracted. The jurisdictional High Court of Allahabad in ***CIT V Saurabh Enterprises*** (supra) and in the case of ***CIT V M/s Apex Finlease Ltd*** (supra), drawing support from the Delhi High Court decision in ***Noida Toll Bridge Co Ltd***, held that "where there was no payment in cash either by the assessee or on its behalf, it could not be said that there was any violation of Section 269SS of the Act" and upheld the deletion of the penalty u/s 271D.

12. As far as the decision of Bombay High Court in the case of *Ajithnath Hi-Tech Builders Pvt Ltd* is concerned, the decision of jurisdictional High Court of Allahabad in the case of *CIT v. Saurabh Enterprises* (supra) and *CIT V M/s Apex Finlease Ltd* (supra) will take precedence and we respectfully follow the same. As far as the decision of the Hon'ble High Court of Allahabad in the case of *Sunil Sagar Co*, relied upon by the CIT(A), is concerned, we find that Hon'ble Court itself distinguished the facts occurring in that case from that of *CIT v. Saurabh Enterprises*. The Hon'ble Allahabad High Court, in the case of *Sunil Sagar Co* confirmed the penalty u/s 271D holding that the decision *CIT v. Saurabh Enterprises* was not applicable because of the following reasons:

"The case of Saurabh Enterprises" is of no avail to the respondent- assessee inasmuch as the Court therein has only considered that the transaction is not of cash on the basis of the report of the Assessing Officer, whereas in the present case, there is no such report and the finding of the Assessing Officer that the assessee has accepted deposit otherwise than by account payee cheque /draft remains undisturbed, meaning thereby that the entries of deposit appearing in the books of the respondent- assessee were not by way of any banking transaction."

13. In the present case, the fact of the case speaks that no loan or deposit was accepted in cash. We therefore hold, in accordance with jurisdictional Allahabad High Court decision of *Saurabh Enterprises* and *CIT V M/s Apex Finlease Ltd* (supra) that the journal entries do not fall within the ken of section 269SS and therefore the ld. CIT(A) has wrongly held that receipt of loan by way of journal entries will tantamount to violation of section 269SS. That apart we find that the assessee was under bona fide belief and rightly so that the provisions of section 269SS are not attracted on account of journal entries, we also hold that the action of Commissioner (Appeals) that benefit of section 273B cannot be extended to the assessee company, is unsustainable on that count also. Considering the facts of the cases in hand from all possible angles, we do not find them to be fit case for levy of penalty u/s 271D of the Act. We accordingly, direct the Assessing Officer to delete the penalty levied in the A.Y under consideration.

14. In the result, the appeal of the assessee in ITA No. 1135/DEL/2024 is allowed.

The order is pronounced in the open court on 23.10.2024.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 23rd OCTOBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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