

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

**ITA Nos. 6523 to 6533/Del/2018
(Asstt. Years: 2008-09 to 2013-14)**

Advance Impex Pvt. Ltd., 39/77, West Punjabi Bagh, New Delhi-110026	Vs	Addl. CIT, Range-1, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAECA7265J		

**ITA Nos. 8486, 8487 & 9049/Del/2019
(Asstt. Years: 2009-10, 2010-11 & 2011-12)**

Advance Impex Pvt. Ltd., 39/77, West Punjabi Bagh, New Delhi-110026	Vs	DCIT, Circle-1(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAECA7265J		

**Assessee by : Sh. Shyam Jain, Adv. &
Sh. Nitin Gulati, Adv.
Revenue by : Sh. Poojan Rana, Sr. DR**

Date of Hearing: 20.11.2024	Date of Pronouncement: 27.11.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

The instant batch of fourteen appeals pertains to a single assessee herein M/s Advance Impex Pvt. Ltd. All other relevant details thereof stand/hereby tabulated as under:

Sl. No.	ITA Nos.	A.Y.	Appellant	Respondent	Order passed against	Proceedings u/s
1.	6523/Del/2018	2008-09	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 43/17-18 Dated 16.08.2018	271D
2.	6524/Del/2018	2009-10	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 44/17-18 dated 16.08.2018	271D

3.	6525/Del/2018	2010-11	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 46/17-18 dated 16.08.2018	271D
4.	6526/Del/2018	2011-12	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 49/17-18 dated 16.08.2018	271D
5.	6527/Del/2018	2012-13	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 50/17-18 dated 16.08.2018	271D
6.	6528/Del/2018	2013-14	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 53/17-18 dated 16.08.2018	271D
7.	6529/Del/2018	2009-10	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 45/17-18 dated 16.08.2018	271E
8.	6530/Del/2018	2010-11	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 47/17-18 dated 16.08.2018	271E
9.	6531/Del/2018	2011-12	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 48/17-18 dated 16.08.2018	271E
10	6532/Del/2018	2012-13	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 51/17-18 dated 16.08.2018	271E
11	6533/Del/2018	2013-14	Advance Impex Pvt. Ltd.	Addl. CIT	CIT(A)-1, New Delhi Appeal No. 52/17-18 dated 16.08.2018	271E
12	8486/Del/2019	2009-10	Advance Impex Pvt. Ltd.	DCIT	CIT(A)-1, New Delhi Appeal No. 706/16-17 dated 30.08.2019	143(3) r.w.s 147
13	8487/Del/2019	2010-11	Advance Impex Pvt. Ltd.	DCIT	CIT(A)-1, New Delhi Appeal No. 214/16-17 dated 30.08.2019	147 r.w.s 144
14	9049/Del/2019	2011-12	Advance Impex Pvt. Ltd.	DCIT	CIT(A)-1, New Delhi Appeal No. 195/18-19 dated 16.10.2019	147 r.w.s. 143(3)

2. Heard both parties at length. Case files perused.

3. It emerges during the course of hearing that there arises a common inter connected issue in assessee's all the instant fourteen appeals wherein the learned lower authorities have *inter alia* held it to have availed unsecured loans in cash from

one Mr. Sant Lal Aggarwal his group concerns and paid interest to the creditor entities in the very mode followed by levy of penalty u/s 271D and 271E of the Act, involving varying sums.

4. Both the parties are very much *ad idem* during the course of hearing that the assessee's appeal ITA No. 8486/Del/2019 for A.Y. 2009-10 involving section 147 r.w.s. 143(3) proceedings could be very well taken as the "lead" case.

5. It next emerges from a perusal of the Assessing Officer's corresponding assessment dated 27.12.2016 in this lead case that some cash was seized in Gujarat which resulted in the department's investigation wing passing information to the assessee's Assessing Officer that one Sh. Sant Lal Aggarwal had admitted to have advanced cash loans to the assessee; which in turn, also involved the latter's cash interest repaid as well to the tune of Rs.1,81,47,335/-.

6. The assessee appears to have out rightly denied any such unsecured cash loans as well as interest payment thereupon before the Assessing Officer which stood rejected in the assessment going by his information coming from the department's investigation wing. He thus proceeded to assess cash interest payment amounting to Rs.1,81,47,335/- as unexplained expenditure u/s 69C of the Act. He further initiated section 271D and 271E penalties against the assessee as well as on the ground that both his availing cash loan and repayment thereof by the very mode violated the corresponding provisions i.e. section 269SS and 269T of the Act. The CIT(A)'s lower appellate discussion has upheld the assessment findings on all the foregoing issues.

It is in this factual backdrop that the assessee has preferred the instant "lead" quantum appeal ITA No. 8487/Del/2019 for A.Y. 2010-11.

7. We have given our thoughtful consideration to rival stands wherein the assessee's case is that there is not even *iota* of evidence suggesting either unsecured cash loans or repayment thereof which could attract both section 69C addition as well as section 271D and 271E penalties.

8. The Revenue's on the other hand strongly contests the assessee's arguments on the ground that Sh. Sant Lal Aggarwal had indeed deposed in his statement recorded that it had availed cash loans and also paid cash interest thereupon.

9. Faced with this situation, we note from the case file that the earlier learned co-ordinate bench had directed the department to produce the relevant material going against the assessee indicating it to have availed cash loans and paid cash interest. The department had sought eight weeks time on 16.11.2023 and no such material; much less tangible one, to this effect has seen light of the day. When we sought to know the Revenue's response, Mr. Rana sought to refer to Sh. Sant Lal Aggarwal's statement at pages 1 to 16 that he had duly admitted to have advanced cash loans to the assessee. We ourselves read out this statement comprising of Sh. Sant Lal Aggarwal reply 1 to 32 questions wherein he had rather denied any connection with the assessee at page 14 with reference to question no. 7.

10. It is at this stage that Mr. Jain refers to the tribunal's earlier learned co-ordinate bench's order dated 16.06.2020 in M/s Shagun Jewellers Pvt. Ltd. Vs. ACIT in ITA No.

9890/Del/2019 wherein the department stand seeking to made addition(s) as Mr. Aggarwal's statement stood rejected.

11. The Revenue on the other hand, sought to distinguish the said decision that the facts in both these cases do not stand on identical footing. Be that it may, the fact remains that there is no material in the case file specifically quoted pinpointing any unsecured loans availed by the assessee which in turn could invite the alleged cash interest payment or violation of section 269SS or 269T in the foregoing terms. We thus have no option but to delete section 69C addition(s) in the foregoing "lead" case as well as those involving section 143(3) r.w.s. 147 proceedings and also reverse the section 271D and 271E penalties in the absence of any evidence produced by the department. The assessee succeeds in all its fourteen appeal therefore.

No other ground has been pressed at the assessee behest.

12. To sum up, these assessee's fourteen appeals ITA Nos. 6523 to 6533/Del/2018, 8486, 8487 & 9049/Del/2019 are allowed in above terms. A copy of this common order be placed in respective case files.

Order Pronounced in the Open Court on 27/11/2024.

Sd/-

(M. Balaganesh)
Accountant Member

Dated: 27/11/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR