

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No. 198/Agr/2024
Assessment Year:2017-18

Prabhat Cold Storage and Agro Processing Pvt. Ltd., 20, Sabji Mandi, Crossing, Firozabad (UP).	Vs.	Addl. CIT, Range 2(1), Agra.
PAN :AAACP9717A		
(Appellant)		(Respondent)

Assessee by	Sh. Avdhesh Kumar, C.A.
Department by	Sh. Shailender Shrivastava, Sr. DR

Date of hearing	24.03.2025
Date of pronouncement	02.04.2025

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order passed by the learned Commissioner of Income-tax (Appeals) [in short "CIT(A)"] u/s. 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") confirming the levy of penalty u/s. 271D of the Act.

2. At the outset itself learned counsel for the assessee pointed out that both the revenue authorities below had proceeded to levy penalty u/s. 271D of the Act and confirmed the same assuming incorrect facts.

He firstly pointed out that the penalty u/s. 271D of the Act is levied for violation of the provisions of section 269SS of the Act, which he pointed out, specifies that no loan or deposit shall be **taken or accepted** by any person otherwise by account payee cheque or account payee bank draft. He pointed that provision of section 269SS bars acceptance of loans or deposits in cash and violation of this provision attracts penalty u/s. 271D of the Act. With respect to this position of law, there is no dispute. He thereafter pointed out that in the case of the assessee penalty u/s. 271D was levied on an amount of Rs.23,27,610/-, which was noted by the assessing officer as advance received by the assessee from farmers in cash. He drew our attention to the order levying penalty u/s. 271D of the Act at page No. 2 wherein said fact is noted along with complete details of the purported advances of 23.27 lakhs taken by the assessee. He thereafter took us to the assessment order passed u/s. 147 of the Act wherein the Assessing Officer first noted the fact of the assessee dealing in cash and initiating penalty u/s. 271D of the Act. Drawing our attention to page 24 of the order, he pointed out that the Assessing Officer had categorically noted the assessee to have **taken back advances** in cash totaling to Rs.23.27 lacs **in contravention of the provisions of section 269T of the Act**. He also pointed out that the Assessing Officer noted the

assessee to have paid advances totaling to Rs.11.2 lacs. Our attention was drawn to the finding of the Assessing Officer as under :

“On perusal of the above chart, it is abundantly clear that the assessee had paid cash advances totaling to Rs.11,21,750/- which is in contravention to the provisions of section 269SS and **had taken back their advances in cash totaling to Rs.23,27,610/- which is in contravention to the provisions of section 269T of the Act.**”

3. He further pointed out that the Assessing Officer thereafter proposed penalty u/s. 271E for the payment received in contravention of section 269T of the Act.

He, therefore, pointed out that the factual finding of the Assessing Officer was that the amount of Rs.23,27,610/- was advances given by the assessee to farmers, which were taken back in cash in contravention of the provisions of section 269T of the Act, for which penalty u/s. 271E was leviable. He drew out attention to the provisions of section 269T, which reads as under :

Mode of repayment of certain loans or deposits.

269T. No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed if—

- (a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or
- (b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or

other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

- (c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is twenty thousand rupees or more:

4. Referring to the same, he pointed out that the said provision debars repayment of any loan or deposit in modes other than that specified in the section, i.e. primarily repayment in cash is debarred u/s. 269T of the Act and penalty u/s. 271E is leviable on the person making the repayment. He drew our attention to the provisions of section 271E in this regard. He, therefore, contended that when the case of the Assessing Officer was that amount of Rs.23,27,610/- represented repayment of advances in cash attracting penalty u/s. 271E of the Act, the same was not leviable on the assessee but on the parties who made repayment in cash. He pointed out that besides the Assessing Officer had treated the amount of Rs.23,27,610/- as advance received from the farmers in cash, which is contrary to the facts recorded by the Assessing Officer. Therefore, this was not a case of contravention of the provisions of section 269SS of the Act and there is no case for levying penalty u/s. 271D of the Act.

Learned DR was unable to controvert the factual contention of the assessee that in the assessment framed in the present case, the assessee was noted as a fact to have received back advances of Rs.23.27 lacs and not received loans and advances of Rs.23.27 lacs.

In the light of this fact, we are in complete agreement with the Id. Counsel of the assessee that the penalty levied on the assessee for contravention of the provisions of section 269SS of the Act is totally misdirected as levied on assumption of incorrect facts of the case and is, therefore, we hold, not sustainable in law. Same is, therefore, directed to be deleted.

5. Appeal of the assessee is, therefore, allowed.

Order pronounced in the open court on 02.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated:

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra