

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं

श्री रakesh मिश्रा, लेखा सदस्य
के समक्ष

Before

SRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

&

SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 1921/KOL/2024

Assessment Year: 2018-19

Yuksom Breweries Ltd.	Vs.	Addl./Joint CIT, Range-2, Siliguri
(Appellant)		(Respondent)
PAN: AAACY3532C		

Appearances:

Assessee represented by : Siddharth Agarwal, Advocate.

Department represented by : Sailen Samadder, Add. CIT, Sr. DR.

Date of concluding the hearing : 17-April-2025

Date of pronouncing the order : 16-July-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2018-19 dated 10.08.2024, which has been passed against the penalty order u/s 271E of the Act, dated 30.12.2022.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. (a) For that the Ld. CIT(A) was not justified in upholding the order passed by the National Faceless Assessment Centre u/s 271E levying a penalty of Rs. 63,82,872/- for the alleged violation of section 269T.

(b) For that the Ld. CIT(A) ought to have quashed the order passed u/s 271E for non-recording of satisfaction for levy of penalty and non-initiation of penalty in the assessment order passed u/s 143(3).

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the penalty of Rs. 63,82,872/- imposed u/s 271E on account of alleged contravention of the provision of the section 269T.

3. For that the Ld. CIT(A) ought to have appreciated that adjustment of trade security liability with trade receivables does not amount to repayment of deposits within the meaning of section 269T and, as such, penalty levied u/s 271E was liable to be deleted.

4. For that the Ld. CIT(A) ought to have appreciated that there was a reasonable cause as per the provisions of section 273B in the instant case and, as such, penalty u/s 271E was not leviable.

5. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

3. Brief facts of the case are that the assessee had filed the return of income on 30.09.2018 showing total income of ₹‘NIL’ and current year loss of ₹2,69,34,731/-. The case was selected for limited scrutiny and assessment order u/s 143(3) r.w.s. 143(3A) r.w.s. 143(3B) of the Act was passed on 05.03.2021 and the returned income as per the assessee was accepted. Subsequently, an order u/s 271E of the Act dated 30.12.2022 was passed as the assessee had made repayment of loan/deposit or any specified advance amount which exceeds the limit specified in section 269T of the Act during the year other than by cheque/bank/electronic clearing system through banking channel. From perusal of Form-3CD it was observed that the assessee had made



repayment of loan/deposit exceeding the limit specified in section 269T of the Act amounting to ₹63,82,872/- to several parties other than by cheque/bank/electronic clearing system through banking channel. Penalty was initiated by issuing show cause notice u/s 274 r.w.s. 271E of the Act. The assessee responded to the notices issued but the submission did not find favour with the Ld. AO and penalty of ₹63,82,872/- was passed. Aggrieved with the penalty order, the assessee filed an appeal before the Ld. CIT(A) who vide para 6.2 and 7.2 of the appeal order dismissed the appeal of the assessee. The relevant findings of the Ld. CIT(A) are as under:

“6.2 I have considered the facts and circumstances of the case, submissions of the appellant and material available on record. Appellant is contending that appellant was having security deposit from various dealers/distributors located in Bhutan. During the year appellant adjusted security deposit of Rs.63,82,872/- against its trade receivables from the respective party and passed journal entries in its books of accounts, debiting the trade security deposits and crediting the respective party. However, appellant has not furnished any documentary evidence to support its contention that the same was trade receivable. Appellant has also not furnished any clarification from the auditor for treating the same as violation of section 269T of the Act. In absence of any documentary evidence contention of the appellant cannot be believed. Hence ground no 2 of appeal is hereby dismissed.

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7.2 I have considered the facts and circumstances of the case, submissions of the appellant and material available on record. Appellant is contending that there is sufficient reasonable cause for the same within the meaning of section 273B of the Act. However, appellant has not explain the business exigency which lead the appellant for repayment of security deposit in cash. Contention of the appellant cannot be accepted as the present case is regarding repayment of deposit in cash. Appellant has not produced any evidence to show that any such deposit was received by the appellant in cash which was later treated as payment as trade receivable. In view of the same ground no 3 of appeal is hereby dismissed.”

4. Rival contentions were heard and the submissions made have been examined. During the course of appeal written submission was filed which has been considered. The Ld. AR submitted that no penalty can be imposed on the basis of general entry as the security deposit of ₹63,82,872/- against the trade receivables from the respective parties were credited to the respective party's account. These were pointed out by the Auditor as violation of section 269T of the Act. Reliance has been placed on the decision of Hon'ble Bombay High Court in the case of **[2012] 22 taxmann.com 138 (Bombay)/[2012] 208 Taxman 299 (Bombay)/[2012] 345 ITR 270 (Bombay)/[2012] 251 CTR 253 (Bombay)[12-06-2012]** wherein the Hon'ble Court has held as under:

"The basic question to be considered is, whether repayment of loan of Rs. 4,28,99,325 by making journal entries in the books of account maintained by the assessee is in contravention of section 269T, and, if so, for failure to comply with the provisions of section 269T, the assessee is liable for penalty under section 271E. [Para 14]

Chapter XXB containing section 269SS to section 269TT was introduced by the Income-tax (Second Amendment) Act, 1981 with effect from 11-7-1981 with a view to counter the evasion of tax. The object of the provisions contained in Chapter XXB of the Act as explained by the CBDT in its circular No. 345, dated 28-6-1982 is that the proliferation of black money poses a serious threat to the national economy and to counter that major economic evil, Chapter XXB has been introduced. [Para 16]

The obligation to repay the deposit by account payee cheque/bank draft for the entities specified in section 269T would have to be construed as mandatory in view of the negative language used in the section. Section 269T provides that none of the entities specified therein shall repay deposit otherwise than by the modes set out therein. In other words, the section provides that irrespective of the fact that there are several modes for repaying the deposit, the entities specified in section 269T shall repay the deposit only by the modes set out therein. The mandatory requirement of section 269T is further fortified by section 276E inserted alongwith section 269T on 11-7-1981 which provides that if a person referred to in section 269T repays any deposit in contravention of section 269T then such person shall be punishable with imprisonment for a period upto two years and also

liable to fine equal to the amount of deposit. Thus, the negative language used in section 269T as also the penal consequences provided in section 276E for non-compliance of the procedure prescribed under section 269T leave no manner of doubt that repayment of deposit in the manner prescribed under section 269T is mandatory. [Para 17]

With effect from 1-4-1989, section 276E dealing with the consequences on failure to comply with section 269T has been omitted and section 271E has been inserted which provides penalty for failure to comply with section 269T. Section 269T has been substituted by Finance Act, 2002 with effect from 1-6-2002 wherein the provision relating to repayment of deposit exceeding the prescribed limit by account payee cheque/draft has been extended to repayment of loans as well. Thus, with effect from 1-6-2002, it is mandatory under section 269T for the persons specified therein to repay any loan/deposit together with interest, if any, exceeding the limits prescribed therein, by account payee cheque/bank draft and failure to do so is made liable for penalty under section 271E. [Para 18]

In the present case, it is not in dispute that the assessee has repaid loan/deposit by debiting the account through journal entries. The question is, whether such repayment of loan/deposit is in contravention of the modes of repayment set out in section 269T. The argument advanced by the assessee that the bona fide transaction of repayment of loan/deposit by way of adjustment through book entries carried out in the ordinary course of business would not come within the mischief of section 269T cannot be accepted, because, the section does not make any distinction between the bona fide and non-bona fide transactions and requires the entities specified therein not to make repayment of any loan/deposit together with the interest, if any otherwise than by an account payee cheque/bank draft if the amount of loan/deposit with interest if any exceeds the limits prescribed therein. Similarly, the argument that only in cases where any loan or deposit is repaid by an outflow of funds, section 269T provides for repayment by an account payee cheque/draft cannot be accepted because section 269T neither refers to the repayment of loan/deposit by outflow of funds nor refers any of other permissible modes of repayment of loan/deposit, but merely puts an embargo on repayment of loan/deposit except by the modes specified therein. Therefore, in the present case, where loan/deposit has been repaid by debiting the account through journal entries, it must be held that the assessee has contravened the provisions of section 269T. [Para 19]

It is relevant to note that with a view to mitigate the hardship that may be caused to the genuine business transactions on account of the bar imposed under section 269T and the penalty imposable under section 271E, the legislature, by the Taxation Laws (Amendment & Miscellaneous Provisions)

Act, 1986 has introduced section 273B with effect from 10-9-1986. Section 273B inter alia provides that notwithstanding anything contained in section 271E, no penalty shall be imposed on the person or the assessee as the case may be for any failure referred to in the said section, if such person or assessee proves that there was reasonable cause for such failure. Thus, reading sections 269T, 271E and 273B together it becomes clear that:

(a) Under section 269T it is mandatory for the persons specified therein to repay loan/deposit only by account payee cheque/draft if the amount of loan/deposit together with interest, if any, exceeds the limits prescribed therein;

(b) Non-compliance of the provisions of section 269T renders the person liable for penalty under section 271E; and

(c) Section 273B provides that no penalty under section 271E shall be imposed if reasonable cause is shown by the concerned person for failure to comply with the provisions of section 269T. [Para 21]

The argument advanced on behalf of the assessee that if section 269T is construed literally, it would lead to absurdity cannot be accepted, because, repayment of loan/deposit by account payee cheque/bank draft is the most common mode of repaying the loan/deposit and making such common method as mandatory does not lead to any absurdity. No doubt, that in some cases genuine business constraints may necessitate repayment of loan/deposit by a mode other than the mode prescribed under section 269T. To cater to the needs of such exigencies, the legislature has enacted section 273B which provides that no penalty under section 271E shall be imposed for contravention of section 269T if reasonable cause for such contravention is shown. [Para 22]

The expression 'reasonable cause' used in section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in sections 249(3), 253(5) and 260A(2A), the legislature has used the expression 'reasonable cause' in section 273B. A cause which is reasonable may not be a 'sufficient cause'. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in section 273B for non-imposition of penalty under section 271E would have to be construed liberally depending upon the facts of each case. [Para 23]

In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an empty

formality to repay the loan/deposit amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee. The fact that the assessee-company belongs to the 'K' which is involved in the securities scam cannot be a ground for sustaining penalty imposed under section 271E if reasonable cause is shown by the assessee for failing to comply with the provisions of section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, though the assessee has violated the provisions of section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under section 271E deserves acceptance. [Para 24]

In the result, the Tribunal was not justified in holding that repayment of loan/deposit through journal entries did not violate the provisions of section 269T. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a bona fide transaction and was made with a view to evade tax, the cause shown by the assessee was a reasonable cause and, therefore, in view of section 273B, no penalty under section 271E could be imposed for contravening the provisions of section 269T.”

5. Reliance has also been placed on the decision of the Hon'ble Bombay High Court in the case of **Commissioner of Income-tax (Central)-IV vs. Ajitnath Hi-Tech Builders (P.) Ltd. [2018] 92 taxmann.com 228 (Bombay)/[2019] 412 ITR 316 (Bombay)[06-02-2018]** wherein the Hon'ble court has held as under:

“■ On merits of the issue, both parties agreed that the Tribunal was correct in holding that receipt of any advance/loan by way of journal entries is in breach of section 269SS as the decision of the High Court in CIT v. Triumph International Finance (I) Ltd. [2012] 22 taxmann.com 138/208 Taxman 299/345 ITR 270 (Bom.) is binding upon it. However, the revenue's grievance is with the impugned order of the Tribunal further holding that no penalty under section 271D is imposable in view of section 273B in the present facts. This is so as the Tribunal holds that the failure to comply with

section 269SS was on account of reasonable cause on the part of the assessee. This finding of reasonable cause was on the application of parameters laid down by this Court in *Triumph International Finance (supra)* to determine reasonable cause for not complying with the provisions of section 269SS. The Revenue seeks to challenge the impugned order of the Tribunal on the ground that Section 273B will have no application as the test of reasonable cause is not satisfied for the reasons that the decision of this Court in *Triumph International Finance (supra)* will have no application as that was case of only one transaction while in this case, there are numerous transactions reflected through the passing of journal entries; the reasons set out for taking advances/deposits by way of journal entry would not satisfy the test of reasonable cause; and the non-satisfaction of showing reasonable cause as required under section 273B gives rise to a question of law.

■ The Tribunal has, on application of the test laid down for establishment of reasonable cause, for breach of section 269SS, found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal has held that in the present facts, neither the genuineness of receipt of loans/deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. Further, the Tribunal records that journal entries constituted a recognized mode of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes outside the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with section 269SS. [Para 3]

■ The test of reasonable cause cannot, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the assessee for reasonable cause and this finding is not shown to be perverse. Finally, the issue of there being a reasonable cause or not is an issue of fact. No inference of law and/or issue of interpretation is to be made. [Para 3]

■ Thus, there was reasonable cause for assessee to receive deposit/loan through journal entries. This non-compliance with section 269SS would certainly be a reasonable cause under section 273B for non imposition of penalty under section 271D. [Para 3]



■ *In the above circumstances, the view taken by the Tribunal in the impugned order holding that no penalty can be imposed upon the assessee as there was a reasonable cause in terms of section 273B for having received loans/deposits through journal entries is at the very least is a possible view in the facts of the case. [Para 3]”*

6. Ld. DR relied upon the order of the Ld. CIT(A) and requested that the order may be upheld.

7. We have considered the submission made. The assessee has filed the copy of security deposit account of various entities showing closing balance during the period from 01.04.2016 to 31.03.2017 as the closing balance of security deposit. Incidentally, these transaction details were not produced before the Ld. AO nor even before the Ld. CIT(A). Accordingly, the order of the Ld. CIT(A) is hereby set aside and the matter is remanded to the Ld. CIT(A) to consider the evidence filed in the course of the appeal before us who shall allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereby pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th July, 2025.

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 16.07.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Yuksom Breweries Ltd., C/O. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite No.213, 2nd Floor, Kolkata, West Bengal, 700069.**
2. **Addl./Joint CIT, Range-2, Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata