

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A No.7220/Mum/2025
(Assessment Year: 2010-11)

Kamal Dwarkadas Gadodia 1305, Golden Rays, Z Wingh, Road No.2, Shashtri Nagar, Andheri West, Mumbai- 400053 PAN : AACPG9650J	vs	Additional CIT 24(2), Mumbai Piramal Chamber, Mumbai-400012
APPELLANT		RESPONDENT

Assessee by : Shri Rushabh Mehta, CA
Respondent by : Shri Hemanshu Joshi (SR DR)

Date of hearing : 05/01/2026
Date of pronouncement : 12/01/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC Delhi [for brevity, 'Ld.CIT(A)'], passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act) for the Assessment Year 2010-11, date of order 27/08/2025. The impugned order emanated from the order of the Learned Additional Commissioner of Income-tax 24(2), Mumbai (for brevity, 'the Ld.CIT') order passed u/s 271D of the Act, date of order 26/07/2018.

2. The registry informed that the appeal was filed with delay of 7 days before the ITAT. The Id. AR submitted that the condonation petition with the notarized affidavit which is duly executed on 10/11/2025 by the assessee and sufficient cause is duly explained. The Id. DR had not made any strong objection against the contention laid down by the assessee in condonation petition. Accordingly, we condone the marginal delay for 7 days and the appeal is taken for adjudication.

3. The brief facts of the case are that the assessee is non filer of the income tax return. During the impugned assessment year a survey was conducted under section 133A of the Act in different parties. On basis of the survey, the statement was recorded under section 131 of the Act of Mr. Suresh Kumar Deep Chand Sharma. On the statement Mr. Sharma stated that Mr. Gauri Shankar Choudhary is the facilitator of the loan both in cheque and in cash. It is found in the recorded statement of Mr. Suresh Kumar Sharma that the assessee also had taken loan in cash and cheque through Mr. Gauri S Choudhury. During the assessment proceeding the Id. AO has considered that the assessee had taken cash loan amount to Rs.37,00,000/- which was duly facilitated by the Mr. Gauri S Choudhary. Finally the assessment was completed under section 143(3) of the Act. The department has initiated separate proceeding under section 271D of the Act for contravening provisions under section 269SS of the Act. During the penalty proceeding the assessee denied the cash loan amount to Rs.37,00,000/- received from different parties. But on basis of the recorded statement of Mr. Gauri Shankar Choudhary and Mr. Suresh Kumar Sharma the penalty under section 271D of the Act was imposed to the extent of Rs.37,00,000/-. Aggrieved assessee

filed an appeal before the Ld. CIT(A). The Ld. CIT(A) upheld the impugned penalty order. Being aggrieved assessee filed an appeal before us.

4. The Ld. AR stated that the during the assessment proceeding the Ld. AO wrongly stated that assessee has accepted the cash loan amount to Rs.37,00,000/-. During the penalty proceeding the assessee contradicted the fact and submitted that the assessee had not taken any cash loan from facilitator. Without any cogent evidence only on the third party statement the penalty was imposed u/s 271D of the Act. The Ld. AR invited our attention in impugned penalty order page no.2 para 6.

“6. Assessee replied vide letters dated 26/06/2018 & 22/07/2018. The gist of the assessee’s submission & contentions are as follows:

6.1. Appeal was filed by the assessee before the Id. CIT (A) against the assessment order u/s 143(3) r.w.s. 147 of the Act for the AY 2010-11 which is pending. Assessee claimed that, in his appeal, he has questioned the basis of addition of the aforesaid loan to his income and also has raised questions in relation to the assessing officer violating principles of natural justice. Assessee contested that these questions have a direct bearing on the present penalty proceedings hence he requested that the matter should be kept in abeyance till the appeal before the Ld. CIT(A) is disposed.

6.2. Assessee has categorically denied the receipt of the cash amount

6.3. Assessee claims that the information in note books and file containing loose sheets of papers not in the form of Books of Accounts are irrelevant and not admissible u/s 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible and the \$269SS is not applicable in his case as there is no evidence of him receiving the loan in cash or cheque.”

5. The Ld. DR argued and stands in favor of the order of revenue authorities. The Ld. DR stated that both the parties during the recorded statement accepted that the cash loan was duly arranged for the assessee from different parties. He further stated that the Ld. CIT(A) considered the issue and decided against the assessee. He invited our attention in appeal order paragraph 6, page no.11 which is reproduced as below:

"6. I have gone through the facts of the case. It is seen that the proceedings u/s 271D was rightly initiated for acceptance of cash loans in contravention of section 269SS of the Act. In course of appellate proceedings, the appellant has failed to make relevant submission against imposition of penalty and has been seeking adjournments on medical grounds. It was also contended that decision of the present appeal may be deferred till decision is made in quantum assessment. I am of the view that there are specific findings in the case of the appellant regarding acceptance of cash loan. The imposition of penalty u/s 271D is independent of the process of assessment as the same amount on, which penalty is imposed for acceptance in cash by way of loan cannot be again considered for addition to the total income under any other provision of the Act. The Addl. CIT has passed a reasonable order discussing all the issues raised by the appellant and pointing out that the appellant by his own admission confirmed of having made regular transactions with Shri Gauri Shankar Choudhary, the loan creditor. Being in close contact with the loan creditor, the appellant himself could have produced him for cross examination, which he conveniently avoided. Therefore, no contrary information has been brought on record against acceptance of loan in cash of Rs. 37,00,000/-. The penalty-imposed u/s 271D is confirmed and the grounds raised in appeal are dismissed. In the result, appeal is dismissed."

6. The Ld. AR further argued and contended that on basis of the third party statement the Ld. AO initiated the penalty proceeding which is not tenable in law. He respectfully relied on the order of Hon'ble Supreme Court in case of **Common Cause (A Registered Society) vs. UOI reported in (2017) 77 taxmann.com 245 (SC)**. The relevant paragraphs are reproduced as below:

“23. It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts.

24. Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order dated 11.11.2016 passed in Sahara's case by the Settlement Commission and the documents have not been relied upon by the Commission against assessee, and thus such documents have no evidentiary value against third parties. On the basis of the materials which have been placed on record, we are of the considered opinion that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents A-8, A-9 and A-10 etc. of Sahara.

25. This Court, in the decision of Lalita Kumari's case (supra), has laid down that when there is commission of offence apparent from the complaint and a cognizable offence is made out, investigation should normally be ordered and the falsity of the allegations can be ascertained during the course of investigation. In our opinion, the decision of LalitaKumari (supra) is of no help to the petitioner for seeking direction for an investigation from a Court on the basis of documents which are irrelevant, and per se not cognizable in law as piece of evidence and inadmissible in evidence and thus a roving inquiry cannot be ordered on such legally unsustainable material.”

7. In view of the foregoing discussion and respectfully following the ratio laid down by the Hon'ble Supreme Court in **Common Cause (A Registered Society)** (supra), we hold that the impugned penalty has been imposed solely on the basis of third-party statements, without any independent, cogent, or corroborative evidence establishing that the assessee had actually accepted cash loans in contravention of section 269SS of the Act. It is well settled that statements of third parties, unsupported by substantive evidence and without affording effective opportunity of cross-examination, cannot form the sole basis for sustaining penalty proceedings under section 271D of the Act. Accordingly, the penalty of Rs.37,00,000/- imposed under section 271D of the Act and confirmed by the Ld. CIT(A) is hereby deleted.

In the result, the appeal filed by the assessee is allowed.

8. In the result the appeal of the assessee bearing **ITA No.7220/Mum/2025** is allowed

Order pronounced in the open court on 12th day of January, 2026.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 12/01/2026

Saumya

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
JODHPUR
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, MUMBAI**