

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

**BEFORE : SHRI I.C. SUDHIR , JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 5471/Del./2012  
Asstt. Year : 2007-08**

Nav-Yug Sewing Machine Co. Ltd., vs. M-10, Kalkaji, New Delhi [PAN :AABCN4225G] (Appellant)	vs.	Addl. C.I.T., Range-13, New Delhi.  (Respondent)
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Appellant by	:	Shri Surjeet Singh, C.A.
Respondent by	:	Shri P. Dam Kanunjna, Sr. DR
Date of hearing	:	20.08.2015
Date of pronouncement	:	22.09.2015

**ORDER**

Per L.P. Sahu, Accountant Member:

This appeal by the assessee is directed against the order of Id. CIT(A)-XVI, New Delhi dated 04.06.2011, challenging the confirmation of penalty of Rs.30,00,000/- imposed by AO u/s. 271D of the Income-tax Act, 1961 for the assessment year 2007-08.

2. The brief facts of the case are that the assessment of the assessee u/s. 143(3) was completed on 11.12.2009 at a total income of Rs.1,03,78,160/- as against returned income of Rs.1,02,55,632/-. During the course of assessment proceedings, the Assessing Officer having perused the loan account of Shri Harpal Singh Pasricha, Managing Director of the assessee company, noticed that a loan of Rs.30 lacs was accepted by the assessee company on behalf of Shri Harpal Singh

Pasricha from the proprietary company of Ms. Neelam Kaur, M/s. Navyug Sales Corporation by passing a book entry in its books of account. The AO further observed that since accepting of loan/deposits otherwise than by an account payee cheque or account payee bank draft exceeding Rs.20,000/- was in contravention of Section 269SS of the Act, he initiated penalty proceedings u/s. 271-D of the Act. In the penalty proceedings, the assessee explained that there is no involvement of transfer of money in this case, as there was only a journal entry which did not fall within the mischief of section 269SS entailing penalty u/s. 271D of the Act. Being not satisfied by the explanation of assessee, the Assessing Officer imposed a penalty of Rs.30,00,000/- u/s. 271D of the Act on the ground that the language of section 269SS puts complete bar on acceptance of a loan otherwise than by A/c payee Cheque/Draft, as is evident from unambiguous language of section; that the decisions cited by the assessee are not applicable to the present case and that the assessee failed to give reasonable cause for not imposing penalty for violation of section 269SS of the Act. The assessee preferred an appeal before the Id. CIT(A), who confirmed the imposition of penalty u/s. 271D on the ground that CBDT Circular No. 387 dated 06.07.1984 explains the introduction of section 269SS, which lists out entities and persons on whom the prohibition contained in section 269SS does not apply and the loans recorded through journal entry are not covered in those exceptions. He also observed that the assessee failed to explain as to why the loan was not accepted by the assessee company by way of account payee cheque/draft particularly when the assessee company and both of its directors maintained bank account and therefore, reasonable cause u/s. 273B does not come to the rescue of the appellant. Aggrieved by the impugned order, the assessee-company has come up in this appeal before us.

3. The Id. Counsel for the assessee contended that in order to expore financial assistance from lending institution, the assessee company had the requirement of raising its share capital which was agreed to be pooled by its directors in the following combination:

Mr. Harpal Singh (MD)	Rs.50,00,000/-
Smt. Neelam Kaur(Director)	Rs.15,00,000/-
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Total	Rs.65,00,000/-.

The above directors had already given loans to the assessee company which had credit balances of Rs.28,83,793/- and Rs.68,94,925/- respectively and it was decided to convert the loan A/c into share capital of the company. Mr. Harpal Singh had lent money to Mrs. Neelam Kaur in his personal capacity which in the proprietary concern of Neelam Kaur namely Nav-Yug Sales Corporation was outstanding to the extent of Rs.33,98,899.85 as Credit banalance of Harpal Singh. Since the loan of Mr. Harpal Singh was insufficient in the books of assessee-company as it was less than Rs.50 laksh, which was the requirement for share capital pooling, Mr. Harpal Singh recalled his loan given to Smt. Neelam Kaur (Prop. Nav-Yug Sales Corpn). In turn, Smt. Neelam Kaur advised the assessee company to transfer Rs.30 lacs out of her loan A/c to the credit of Shri Harpal Singh in the books of assessee company. Accordingly, the appellant company on the advice of Smt. Neelam Kaur (Director), passed journal Entry in its books on 19.03.2007 debiting loan account of Nav-Yug Sales Corportation (Prop. Smt. Neelam Kaur) by Rs.30 lakhs and crediting the same amount to the loan account of Mr. Harpal Singh. Therefore, this journal entry does not stand in breach of section 269SS, as observed by the authorities below. The Id. Counsel for the assessee further contended that there is no involvement of physical transfer of money in this case, as there was a journal entry which did not fall within the mischief of section

269SS warranting levy of penalty u/s. 271D of the Act as per Explanation (iii) appended to section 269SS which explains ó (iii). “*Loan or Deposit*” means *Loan or Deposit of money.*” It was also argued that the shares were subsequently allotted to Shri Harpal Singh Pasricha and Mrs. Neelam Kaur as the loan account of both Directors was later on adjusted against share capital and shares were issued subsequently. In support, ld. AR of the assessee relied upon following decisions:

- (i). CIT vs. Noida Toll Bridge Co. Ltd., 262 ITR 260 (Del)
- (ii). CIT vs. Worldwide Township Projects Ltd. (2014) 367 ITR 433 (Delhi)
- (iii). Order dated 16.01.2015 of ITAT, Delhi (ITA Nos.2253 & 2259/Del/2013 & Ors.) in the cases of ACIT vs. M/s. Vardaan Fashion and ACIT vs. Shri Inderpal Singh Wadhawan.
- (iv). Bombay Conductors & Electricals Ltd. vs. DCIT(1996) 56 TTJ(Ahd.) 580
- (v). Sunflower Builders (P) Ltd. vs. DCIT (1996) 61 ITD (Pune) 227.
- (vi). Order dt. 21.01.11 of ITAT, Mumbai (ITA No. 698/Mumb/2010) in the case of ACIT vs. KNP Securities Pvt. Ltd.
- (vii). Order dt. 25.10.11 of ITAT, Mumbai (ITA No.6077 & 6078/Mumb/2009) in the case of Luminant Investments Ltd. v/s DCIT.
- (viii). Triumph International Finance Ltd.(2012) 22 Taxmann.com 138(Bombay).

4. The learned DR, on the other hand, relying on the orders of the authorities below, submitted that the assessee-company does not come within the exceptions given in section 269SS and he, having accepted the loan otherwise than by way of account payee cheque/draft as contemplated u/s. 269SS of the Act, is liable for penalty u/s. 271D of the Act.

5. We have considered the rival submissions and have perused the material available with us as well as the decisions cited by the parties. Before adjudicating the issue, we feel it convenient to reproduce the provisions of section 269SS of the Act, which read as under :

*269SS. No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—*

*(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or*

*(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or*

*(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:*

**Provided** *that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—*

*(a) the Government;*

*(b) any banking company, post office savings bank or co-operative bank;*

*(c) any corporation established by a Central, State or Provincial Act;*

*(d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*

*(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:*

**Provided further** that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.ô For the purposes of this section,—

(i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;

**(iii) "loan or deposit" means loan or deposit of money;**

(iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.]

From the bare reading of above section in consonance with its Explanations, it is apparent that the deposit or loan must be through money, as explained in Explanation (iii) to this section. It is not in dispute that the loan of Rs.30 Lakhs has been accepted by the assessee-company in the present case by way of journal entry (book entry) and there is no transfer of funds. Such acceptance of loan by way of journal entry, being not covered by the provisions of section 269SS, the assessee-company cannot be held to be liable for penalty u/s. 271D for acceptance of loan in violation of section 269SS. As a matter of fact, the journal entry passed in assessee company's account had the effect of reducing loan of one director and recording the loan of other director. Thus, the loan of one director was transferred to be held as loan of other director. It is also notable that the assessee company received the

original loan through A/c payee cheques only. The copies of account payee cheques are placed by the assessee at page 91 to 117 of the paper book and the bank statements of assessee company wherein these account payee cheques were realized are placed at pages 118 to 140 of the paper book. Subsequent recording of loan by transfer entry(journal entry), in our opinion, was not the loan for the purpose of section 269SS of the Act. Therefore, there being no violation of section 269SS, the assessee cannot be saddled with penalty u/s. 271D of the Act. The learned CIT(A) has relied on the Circular No. 387 dated 06.07.1984. We have gone through the said circular, which lists out the cases where the provisions of section 269SS will not apply. The circular also enlists the exceptions of the entities and persons who are not covered by the provisions of section 269SS. However, we find that there is no clarification regarding the type of loan to be accepted. Para 32.4 of the Circular gives the meaning of loan or deposits which says that the expression of "loan or deposit" for the purpose of the provision will mean "Loan or deposit of money". This implies that only those loans and deposits are covered by section 269SS where funds/money are transferred. We, therefore, are of the opinion that where the loans are recorded by merely passing adjustment entries or journal entries are outside the scope of section 269SS of the Act. Therefore, in our considered opinion, the ld. CIT(A) was not justified in confirming the penalty against the assessee on this count. Our view stands fortified by catena of decisions of Hon'ble jurisdictional High Court and various Benches of ITAT on the same issue, as relied upon by the ld. Counsel for the assessee above. The issue in dispute has been elaborately discussed and decided in favour of the assessee in recent decision dated 16.01.2015 of ITAT, Delhi (ITA Nos.2253 & 2259/Del/2013 & Ors.) in the cases of ACIT vs. M/s. Vardaan Fashion and ACIT vs. Shri Inderpal Singh Wadhawan, wherein after considering plenty of decisions of Hon'ble jurisdictional High Court, the penalties imposed u/s. 271D have been cancelled.

The Id. DR could not be able to bring any cogent material on record to take a different view than that formed in this order hereinabove. We, therefore, find no justification to support the impugned order. The appeal of the assessee is, accordingly, liable to be allowed.

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

Order pronounced in the open court on 22.09.2015.

Sd/-  
**(I.C. SUDHIR)**  
Judicial Member

Sd/-  
**(L.P. SAHU)**  
Accountant Member

Dated : 22.09.2015

\*aks/-

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant. Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*