

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 812, 1003 & 1004/JP/2016
निर्धारण वर्ष/Assessment Year : 2007-08, 2008-09 & 2010-11

M/s. Narayanji Enclave (P) Ltd. 855, Aakron Ka Rasta, Kishanpole Bazar, Jaipur	बनाम Vs.	The JCIT Central Range Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCN 3858 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.K. Gogra, CA and
Shri S.S. Gogra, Advocate

राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT - DR

सुनवाई की तारीख / Date of Hearing : 12/01/2017
घोषणा की तारीख / Date of Pronouncement : 17 /01/2017

आदेश / ORDER

PER BHAGCHAND, AM

These appeals have been filed by the assessee against common order of the Id. CIT(A)- 4, Jaipur dated 03-06-2016 for the assessment years 2007-08, 2008-09 and 2010-11 respectively regarding imposing the penalty of Rs. 1,20,000, 1,60,000 & Rs. 55,000/- u/s 271D of the Act respectively.

2.1 During the course of hearing, ld. AR of the assessee prayed for condonation of delay in assessee's ITA No. 1003/JP/2016 and 1004/JP/2016 for the assessment years 2008-09 and 2010-11 as under:-

“1. That the ld. CIT(A) Jaipur dismissed the appeals for the assessment years 2007-08, 2008-09 and 2010-11 vide his order dated 3-06-2016. The appellant under the bona fide impression submitted single appeal before the Hon'ble ITAT against the order of the CIT which was passed by him as single order. The appellant in form no. 36 in column no. 3 mentioned the reference of appeal for three years. Subsequently, it was realized by the appellant that the three appeals should have been filed before the Hon'ble ITAT in respect of above three years. Vide application dated 11-11-2016 the appellant requested to the Hon'ble ITAT to treat the appeal filed on 12-09-2016 for the A.Y. 2007-08. Since the mistake committed by the assessee noticed voluntarily, therefore, the separate appeal in respect of the assessment year 2008-09 & 2010-11 are being submitted. The delay of 63 days in filing of the appeal may please be condoned.

2. That the delay may please be condoned keeping in view of interest of justice and in favour of the poor applicant.

3. That the appeal fee of Rs. 500/- for A.Y. 2008-09 has been deposited on 8-11-2016 and copy of the challan is enclosed with memo of appeal.

4. That an affidavit in support of the condonation application is submitted herewith.

It is therefore, humbly prayed that the delay occurred due to bonafide and reasonable cause which may kindly be condoned for imparting justice to the assessee.”

2.2 The ld. DR objected to the condonation applications of the assessee for late filing of the appeals.

2.3 I have heard the rival contentions and perused the materials available on record. Keeping in view of the facts and circumstances of the assessee, the condonation applications for late filing of the appeals of the assessee are allowed in view of the judgment of "Hon'ble Apex Court in the case of Collector, Land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 wherein the Hon'ble Court has observed as under:-

"The Legislature has conferred power to condone delay by enacting section 5 of the Limitation Act, 1963, in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression " sufficient cause " in section 5 is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose of the existence of the institution of courts. A justifiably liberal approach has to be adopted on principle. "

Thus the assessee's applications for condonation of delay are allowed.

3.1 Apropos assessee's solitary ground for imposition of penalty u/s 271D of the Act in these three appeals, the facts as emerges from the order of the ld. CIT(A) is as under:-

"4. I have duly considered the assessee's submissions made for the Ays and also carefully gone through penalty order passed u/s 271D of the Act for the years. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. On perusal of

submission, it is seen assessee has received following amounts in cash exceeding Rs. 20,000/- from the following persons:-

A.Y.	Received from	Amount in cash
2007-08	Shri Ram Swaroop Meena & Shri Jitendra Meena	Rs. 1,20,000/-
2008-09	Shri Ram Karan Meena & Smt. Mohini Poonia	Rs. 1,60,000/-
2010-11	Shri Ram Karan Meena & Shri Ram Swaroop Meena, Director	55,000/-

In this regard, assessee has contended that the transactions pertaining to aforementioned sums are in the nature of current account on urgent basis to meet business liability. Explanation given in this regard does not seem to be bona fide as assessee has failed to explain exact nature of 'urgent business requirement'. It is submitted that a/c maintained by assessee is a composite a/c which contains details of entries in cheque (specially for salary transaction & loan transactions) and cash transactions but even after repeated request, no such ledger a/c or cash book of company. Therefore, in view of facts and circumstances of the case, which assessee has failed to justify its contention, penalty levied u/s 271D of the Act is hereby justified in following cases:-

ITA No.	A.Y.	Penalty imposed
269/12-13	2007-08	Rs. 1,20,000/-
270/12-13	2008-09	Rs. 1,60,000/-
271/12-13	2010-11	Rs. 55,000/-

Accordingly, assessee's appeal fails in Gr. No. 1 for the assessment year 2007-08, 2008-09 & 2010-11."

3.2 During the course of hearing, the ld. AR of the assessee submitted that assessee company had received the following funds from its directors on account of current account transactions in the assessment year 2007-08.

S.N.	Name of Director	Date	Amount taken	Nature of funds
1.	Jitendra Meena	30-10-2006	50,000/-	As Share Capital
2.	Ramswaroop Meena	30-10-2006	50,000/-	As share Capital
3.	Ramswaroop Meena	30-10-2006	20,000/-	Funds from Current Account transaction

Further the ld. AR of the assessee submitted that assessee company had received the following funds in form contribution from its Directors as business advance in its regular course of business in the assessment years 2008-09 and 2010-11.

A.Y. 2008-09					A.Y. 2010-11			
S.N.	Name of director	Date	Amount taken	Nature of funds	Name of Director	Date	Amount taken	Nature of funds
1.	Ramkaran Meena	2-04-07	20,000	Funds from current account transaction	Ramkaran Meena	20-11-09	20,000	Funds from director's brother (brother of Ramswaroop Meena)
2.	Ramkaran Meena	3-04-07	20,000	-do-	Ramkaran Meena	28-12-09	5,000	- do -
3.	Ramkaran Meena	4-04-07	20,000	-do-	Ramswaroop Meena	11-10-09	10,000	Funds from director in current account transaction
4.	Mohini Poonia	4-04-07	20,000	-do-	Ramswaroop Meena	12-10-09	20,000	- do
5.	Mohini Poonia	7-04-07	20,000	-do-	-	-	-	-
6.	Mohini Poonia	8-04-07	20,000	-do-	-	-	-	-

7.	Mohini Poonia	22-04-07	20,000	-do-	-	-	-	-
8.	Mohini Poonia	25-04-07	20,000	-do-	-	-	-	-
	Total		1,60,000		Total		55,000	

In the case of assessment year 2007-08, the ld. AR of the assessee submitted that the AO had erred in treating the share capital as loan / deposit whereas it has been agreed by the AO that this is not a loan but erred in treating the same as 'deposit. The shares are issued by company which is closely held by a private company and not a public limited company. Rights and responsibilities under both the companies are altogether different and having different provisions for compliance for issuance of share capital. In Private Ltd. company shares may be issued without following up guidelines of SEBI whereas in case of Public Limited Company all guidelines of SEBI including issuing of prospectus, filing of letter of intent etc. are required to be fulfilled. Therefore, the provision of Section 269SS and 269T are not applicable on closely held company. The ld. AR further submitted that the funds are taken by the company from its Director in its regular course of business from current account maintained by company in its books of account. These funds are received to meet urgent business needs of company time to time. The ld. AR further submitted that copy of the confirmation of accounts were

submitted to the lower authorities but the lower authorities erred in confirming the penalty u/s 271D of the Act. The ld. AR further submitted that the transactions are in between a closely held company and its directors implying that one individual is managing the affairs of two concerns and the transactions do not partake the nature of deposit or loan. The ld. AR further submitted that entire transaction is taken with bona fide intention and no ingenuity is brought in the assessment order for the year under consideration. The return income is accepted. When there is no case of against the assessee then these transactions had nothing to do with evasion of tax or concealment of income. The further submitted that one single person Shri Ramswaroop Meena is managing entire business affairs of the group companies and the decision to transfer of funds from one concern to another or to repay the funds could have been said to have been largely influenced by the same individual but it cannot be said that transaction partake the nature of either deposit or loan. The ld. AR filed the copy of affidavit dated 21-11-201 of Shri Ramswaroop Meena with regard to his contention that one person was managing the entire business affairs of entire group. The ld. AR of the assessee relied on following case laws to this effect.

1. ITO Vs. Yugant Travels Pvt. Ltd. 2016 – 50 ITR – page 328 (Delhi ITAT) - Held that assessee received large amount of cash in form of share application money, AO was not justified in treating the sum as loan or deposit and initiating penalty u/s. 271D because share application money was outside the purview of section 269SS, hence same was not loan or deposit.

2. Dillu Cine Enterprises Pvt. Ltd. Vs. Addl. CIT 2002-Tax Publisher (DT) 733 – Hyderabad Tribunal - Held that “the active director of the assessee company is clearly not covered by the expression “any other person” occurring in section 269SS of the Act.”Further held that “mere technical breach of provisions, while transactions were held to be genuine do not attract provisions of section 269SS, therefore, where one of the directors of assessee company brought funds from his personal account whenever assessee was in requirement of funds whether transactions between assessee and director of assessee do not fall within mischief sought to be remedied by the section as there is no case against assessee that these transactions had anything to do with evasion of tax or concealment of income.”

3. CIT Vs. Idhayam Publications Ltd. 2006-Tax Publisher (DT) 1251 – Madras High Court - Held that : “amount received by a private company from its director neither loan nor deposit – Since the transaction did not fall within the meaning of loan or advance there was no violation of section 269SS.

4. CIT Vs. Ajanta Dyeing & Printing Mills 2003 - 264 - ITR - Page 505 (Rajasthan High Court) - Held that while levying of penalty u/s. 271D for violation of provision of section 269SS adjustment of Rs. 20,000/- is to be allowed which is permissible u/s. 269SS.

5. Sudha Agro Oil & Chemical Industries Vs. Addl. CIT 2016 – Tax Publisher (DT) – 2783 – Vishakhapatnam Tribunal - Held that “after taking into consideration of judgment of Raj. High Court in case of Ajanta Dying & Printing Mills held that “penalty shall be levied after excluding Rs. 20,000/- in each case as permissible u/s. 269SS of the Act.

3.3 In the case of assessment year 2008-09 and 2009-10, the Id. AR of the assessee has filed almost similar written submission praying therein that the funds are taken by the company from its Directors in its regular course of business from current account maintained by company in its books of account. The funds are received to meet urgent business needs of the company time to time which are in form of contribution instead of deposit. The confirmation of accounts were submitted by the assessee before the lower authorities. The Id. AR further submitted that the term 'any other person does not denote director of the company. In this case, since the receipt was from Director of assessee company therefore, the provisions of Section 269SS does not apply. The Id. AR further submitted that the transactions are in between a closely held company and its directors implying that one individual is managing the affairs of two concerns and the transactions do not partake the nature of deposit of loan. The Id. AR further submitted that entire transaction is taken with bona fide intention and no ingenuity is brought in the assessment order for the year under consideration. The return income is accepted. When there is no case of against the assessee then these transactions had nothing to do with evasion of tax or concealment of income. The further submitted that

one single person Shri Ramswaroop Meena is managing entire business affairs of the group companies and the decision to transfer of funds from one concern to another or to repay the funds could have been said to have been largely influenced by the same individual but it cannot be said that transaction partake the nature of either deposit or loan. The ld. AR filed the copy of affidavit dated 21-11-201 of Shri Ramswaroop Meena (elder brother) with regard to his contention that one person was managing the entire business affairs of entire group. The ld. AR of the assessee relied on following case laws to this effect.

1. Dillu Cine Enterprises Pvt. Ltd. Vs. Addl. CIT 2002-Tax Publisher (DT) 733 – Hyderabad Tribunal
2. CIT Vs. Idhayam Publications Ltd. 2006-Tax Publisher (DT) 1251 – Madras High Court .
3. CIT vs. Yesodha (2015) 66 (II) ITCL-Page 578 (Chennai Tribunal) - Held that transaction between family members were genuine and bona fide transactions. The source of money had already been disclosed in the return of HUF. Further it was not the case of Revenue that assessee had introduced unaccounted money in the books of accounts as the very purpose of bringing in the provisions of Section 269SS and 269T was to curb the practice of introducing black money into books of account. The assessee had no intention to evade tax and did not make any attempt to make any liability. The individual had accepted loans from HUF for purchase of property in their individual names and had reasonable cause for accepting such loans. Therefore, the order of CIT(A) sustaining the penalty levied by AO was not justified and same was set aside. Followed case of CIT vs. M Yesodha (Madras High Court).

4. CIT Vs. Ajanta Dyeing & Printing Mills 2003 - 264 - ITR - Page 505 (Rajasthan High Court)

5. Sudha Agro Oil & Chemical Industries Vs. Addl. CIT 2016 – Tax Publisher (DT) – 2783 – Vishakhapatnam Tribunal

3.4 During the course of hearing, the ld. DR relied on the orders of the lower authorities.

3.5 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee had received the funds from its directors for meeting out the urgent needs of assessee company for which the assessee had submitted the confirmations of accounts before the lower authorities. It is noted that the return of income filed by the assessee for the above assessment years under consideration were accepted and there was no case against the assessee that these transactions had anything to do with evasion of tax or concealment of income. It may be noted that Section 271D read with Section 269SS was introduced by the legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. It is further noted that on similar type of issue the ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT vide its order dated 13-06-2014 in ITA

No. 847/JP/2011 for the assessment year 2006-07 had deleted the penalty u/s 271D of the Act by observing as under:-

“4.0 We have heard the rival submissions and perused the relevant material available on record. From the record there is no shred of doubt about the genuineness of the transactions and their disclosure in the books of account and returns of both the assessee who happen to be husband and wife, carrying on the business as sister concerns. Section 271D read with Section 269SS was introduced by the legislature to discourage the menace of black money. Since these transactions are genuine, this element of black money is totally ruled out. The assessee has given an explanation in our view is not unreasonable and is based on business exigencies also for payments to labourers and lenders. Under these circumstances, we are of the view that the transactions being genuine and the assessee having offered reasonable explanation justifying these cash transactions, the impugned penalty u/s 271D is not leviable. Our view is fortified by the judgement of Hon'ble Jurisdictional High Court in the case of CIT vs. Raj Kumar Sharma (supra) and the judgement of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Saini Medical Store (supra) which is followed by Hon'ble P & H High Court in the case of CIT vs. Sunil Kumar Goel (supra). Thus in view of the facts and circumstances of the case and the decisions relied on above, the penalty is deleted.

Respectfully following the decision of ITAT Coordinate Bench in the case of Smt. Kusum Dhamani vs. Addl. CIT (supra) and also in view of the following case laws as relied upon by the ld. AR of the assessee namely :-

1. ITO vs. Yugant Travels (P) Ltd. (2016), 50 ITR 328 (Delhi ITAT)
2. Dillu Cine Enterprises (P) Ltd. vs. Addl. CIT (2002) Tax Publisher (DT) 733 – Hyderabad Tribunal.
3. CIT vs. Idhayan Publication Ltd. (2006) Tax Publisher (DT) 1251-Madras High Court

4. CIT vs. Yesodha (2015) 66 (II) ITCL 578 (Chennai Tribunal)
5. CIT vs. Ajana Dyeing & Printing Mills (2003) 264 ITR 505 (Raj)
6. Sudha Agro & Chemical Industries vs. Addl. CIT (2016) – Tax Publisher (DT) 2783 (Vishakhapatnam Tribunal)

I direct to delete the penalty of Rs. 1.20 lacs (A.Y. 2007-08), Rs. 1.60 lacs (A.Y. 2008-09) and Rs. 55,000 (A.Y. 2010-11) respectively sustained by the ld. CIT(A) in assessee's case for the assessment years (supra). Thus these three appeals of the assessee are allowed.

4.0 In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 17/01/2017

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 17 /01/ 2017

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Narayanji Enclave (P) Ltd. Jaipur
2. प्रत्यर्थी / The Respondent- The JCIT, Central Range, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 812/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar