

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.7038/Mum/2014 (Assessment Year- 2010-11)

M/s Satidham Syntex Ltd. Vajras, No. 1445, 28 th Main, South End ‘A’ Cross, Jaya Nagar, 9 th Block, Banglore-560069. PAN: AAFCS6656N	Vs.	ACIT Range-5(3), Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Rakesh Joshi (AR)

Revenue by : Shri Shridhar E. (DR)

Date of hearing : 09.02.2017

Date of Pronouncement : 08.03.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee u/s 253 of the Income-tax Act (‘the Act’) is directed against the order of Ld. Commissioner of Income-tax (Appeals) [for short ‘the CIT(A)] –9, Mumbai dated 09.09.2014 for Assessment Year (AY) 2010-11. The sole ground of appeal raised by assessee is that ld. CIT(A) erred in confirming the levy of penalty u/s 271E or contravention of provision of section 269T of the Act.
2. Brief facts of the case are that the assessee-company is engaged in the business of manufacturing and trading of cotton grey fabrics, filed its return of income for relevant AY on 27.09.2010 declaring loss of Rs. 79,268/-. The assessment was completed u/s 143(3) of the Act on 18.03.2013. The Assessing Officer (AO) while finalizing the assessment order initiated the penalty under section 271E holding that assessee has violated the provision of section 269T. The AO observed that the assessee has transferred deposit received from B. Sarita and Prasant aggregating

to RS. 1,48,64,988/- to share application money account by passing journal entry. The AO took the view that the deposit have been paid in violation of section 269T. The assessing officer issued show cause notice 18.03.2013 to the assessee as to why penalty be not levied under section 271E. The assessee filed reply of the show-cause notice vide reply dated 19.06.2013. In the reply the assessee contended that assessee has not contravened the provision of section 269T, the assessee has merely passed the journal entry to Transfer Pending Advances amounts of share application money account of Smt. B. Sarita and S.B. Prashant. The transaction merely by book entry do not attract the violation of provision of section 269SS and section 269T, hence, no penalty can be levied against the assessee. The contention of assessee was not accepted by ACIT holding that genuineness of transaction does not absolve the assessee's liability in contravening the mandatory provision of the Act to ensure the mode of repayment by Account Payee Cheque or Account Payee Draft. The ACIT levied the penalty of equal amount of payment of loan i.e. Rs. 95,00,000/- to B. Sarita and Rs. 53,64,994/- to Mr. S.B. Prashant. On appeal before the Id. CIT(A), the penalty order levied by ACIT was sustained. Thus, further aggrieved by the order of Id. CIT(A), the present appeal is filed before us.

3. We have heard the Id AR for the assessee and the Id DR for the revenue and perused the material on record. The Ld. AR of the assessee argued that share application money of B. Sarita was adjusted against loan owned by B. Sarita to the assessee-company to the extent of Rs. 3,96,872/- and share application money in previous year (2008-09) of Rs. 91,03,128/- was adjusted against the money paid to Mynah Industries. These amounts were received as loan application money and were returned by cheques. The Id. AR of the assessee further submitted that the assessee has sufficiently explained that the payments made through Journal Entry to extinguish liability. The AR for assessee further explained that penalty is not automatic for default u/s 269SS and 269T, in case the assessee established the reasonable cause. The assessee has received the amount by Account Payee Cheque and extinguished the liability by passing the Journal Entry and has not

made any unreasonable transaction. Thus, the assessee sufficiently explained the fact to the assessing officer. The Ld. AR of the assessee in support of his submission relied upon the decision of Hon'ble Bombay High Court in CIT vs. M/s Triumph International Finance Ltd. 345 ITR 270 and the decision of Kolkata Tribunal in Inxcel Pharmaceutical vs. DCIT in ITA Nos. 1930, 1931, 1932, 1937 & 1938/Kol/2009 dated 12.01.2012. On the other hand, ld. DR for the Revenue supported the order of authorities below and further relied upon the decision of Hon'ble Jharkhand High Court in Bhalotia Engineering vs. CIT 169 CTR 619 (Jharkhand)/275 ITR 399.

4. We have considered the rival contention of the parties and further gone through the orders of authorities below. First, to appreciate the facts of the present case we may refer the relevant provision of section 269T, section 271E and section 273B of the Act.

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 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 if—

- (a) the amount of the loan or deposit 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 cooperative 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, is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid:

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from—

- (i) Government;
- (ii) any banking company, post office savings bank or co-operative bank;
- (iii) any corporation established by a Central, State or Provincial Act;
- (iv) any Government company as defined in section 617 of the Companies Act, 1956
- (v) 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.

Explanation.—For the purposes of this section,—

- (i) "banking company" shall have the meaning assigned to it in clause (i) of the *Explanation* to section 269SS;
 - (ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
 - (iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.
- 271E. Penalty for failure to comply with the provisions of section 269T**
- (1) If a person repays any loan or deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so repaid.
 - (2) Any penalty imposed under sub-section (1) shall be imposed by the Joint Commissioner.

273B. Penalty not to be imposed in certain cases

Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of] section 271, section 271A, section 271AA, section 271B, section 271BA section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B, or sub-section (1) or sub-section (1A), of section 272BB or sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposed on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

If, we search the history of chapter XXB containing the sections 269SS to section 269TT, we find that this chapter was introduced by way of amendment in the income Tax in 1981 with effect from 11.07.1981 with a view to counter the evasion of tax. This chapter provides that none of the entities specified herein, certainly like the assessee company, shall repay any deposit made with it otherwise than by an account payee cheque or bank draft in the name of person who had made the deposit with interest, if any, payable thereon, exceeding the amount provided therein. The obligation to repay the deposit by way of account payee cheques or bank draft to such entities is mandatory as per the negative language used in the section.

Now turning to the facts of the case in hand, the AO at the time of passing assessment order and while dealing with adjustment of share application money observed as under;

“Share application money adjustment in the case of B Sarita is as under :-

- (a) Adjustment against money owe by B Sarita to the company, Satidham Syntex Ltd to the extent of Rs.3,96,872/-
 - (b) Adjustment against money paid to Mynah Industries Ltd as Share application money in previous year 08-09 to the extent of Rs.91,03,0128/-
- Share application money adjustment in the case of Prashant as under :-
- (a) Adjustment against money owe by him to the company, Satidham Syntex Ltd to the extent of Rs.7,57,195/-

- (b) Adjustment against money paid to Mynah Industries Ltd as Share application money in previous year 08-09 to the extent of Rs.96,872/-

All these re-payments were made by books entry without routed through account payee cheques/ drafts as provided under section 269T of IT Act. A Penalty proceeding under section 269T of the Act is initiated for default in mode of re-payment which was not routed through account payee cheques/ draft or through banking channel.”

5. The AO initiated the penalty proceeding holding that the assessee-company made the re-payment of loan of Rs. 95,00,000/- to Miss. B. Sarita and Rs. 53,63,998/- to Mr. Prashant other than by way of Account Payee Cheque or draft. The assessee in response to the notice of penalty filed its reply dated 19.06.2013. The assessee in reply contended that the provision of section 269T has not been contravened; the assessee merely passed Journal Entry to Transfer Pending Advances amount to Miss. B. Sarita and Mr. Prashant. The transactions are merely book entry which does not attract the provision of section 269SS and 269T. Hence, no penalty u/s 271D and 271E can be levied. The assessee has received the payment by Account Payee Cheques and extinguishes its liability by mutual consent by passing Journal Entry and has not made any unreasonable transaction. The contention of assessee was not accepted by ACIT holding that genuineness of transaction does not absolve the assessee-company from penal liabilities. The ACIT not accepted the reasonable cause explained by assessee-company and levied the penalty of Rs. 1,48,64,998/-. The similar contention urged before the First Appellate Authority (FAA). The FAA conclude that he is not convinced nor find any urgency as to why the assessee resorted to the shortcuts in the adjustment and concluded that the assessee has violated the provision of section 269T of the Act. However, the Id. CIT(A) noticed that the entire amount in case of Mr. Prashant has not been adjusted by Journal Entries as Rs. 45,00,000/- was still lying as closing balance and thus restricted the penalty to the extent of adjustment i.e. the amount lying in closing balance (Rs. 45,00,000/-).
6. We have seen that adjustment of money is not in dispute as the same was made by way of journal entry. The foremost question for our consideration

is whether the assessee company contravened the provision of section 269T or not. In case there is allegation against the assessee company about the contravention of the provision of section 269T, then, if the assessee has explained the fact with such reasonable cause for such failure or such reason was sufficiently explained by the assessee in reply to the show cause notice at the time of initiation of penalty. The expression 'reasonable cause' is not defined in the Act. Thus, as per our opinion the 'reasonable cause' must be considered depending on the facts and circumstances of each case. The assessee explained that the amount by account payee cheques and has merely extinguished the mutual liability by passing journal entry and no penalty can be made out against them. The AO has not doubted the genuineness of the journal entry, the only ground of initiation of penalty was that repayment was made by book entry and not routed through account payee cheques or drafts. Further there is no allegation of AO that the book entry was made to evade the tax. The Hon'ble Bombay High Court in CIT Vs Triumph International Finance(I) Ltd(supra) held that in absence of any finding recorded in the assessment order or in the penalty order to the effect that such re-payment was not bonafide transaction with a view to evade tax, the explanation given by the assessee for passing journal entry was accepted as a reasonable cause under section 273B of the Act. In this case before Hon'ble Bombay High court also, the assessee was liable to receive the amount toward the sale price of share sold. Accordingly, it was submitted that it would have been an empty formality to repay the loan by account payee cheque and receive back same amount toward the sale price of shares. In the instant case also, the facts are identical. The decision of Hon'ble Bombay High Court in Triumph International Finance (I) Ltd(supra) was referred by assessee before the lower authorities. In our considered opinion the lower authorities failed to notice the conclusion on which Hon'ble Bombay High Court ultimately arrived. The facts of the decision in Bhalotia Engineering Works Pvt Vs

CIT (supra) are at variance as that case the share money was received in cash. Moreover, the decision of Mumbai High Court in Triumph International Finance (I) Ltd (supra) is binding precedent on this Tribunal being jurisdictional High Court. With these observations the appeal of the assessee is allowed. No order as to cost.

Order pronounced in the open court on this 8th March, 2017.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai; Dated 08/03/2017
S.K.PS

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai