IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI.
BEFORE SHRI K.G. BANSAL & SHRI C.M. GARG

I.T.A. Nos. 5689 & 5690(Del)/2010
Assessment year: 2006-07

Deputy Commissioner of Income Tax, Circle 11(1), New Delhi.	Vs.	M/s Forging Ltd., F-1/9, Okhla Indl Estate, Phase-I, New Delhi. PAN: AAACF0983A
(Applicant)		(Respondent)

Appellant by : Ms. Renuka Jain, Sr. DR
Respondent by : Shri P.N. Monga &
Shri Mona Monga, Advocates
Date of Hearing: 01.03.2012
Date of Pronouncement: 16.03.2012.

ORDER

PER K.G. BANSAL : A.M

These two appeals regarding leviability of penalty u/s 271D and 271E of the Income-tax Act, 1961 were argued in a consolidated manner by the ld. senior DR and the ld. counsel for the assessee. Therefore, a consolidated order is passed.

1.1 The only substantive ground taken in appeal no. 5689(Del)/2010 is to the effect that the ld. CIT(Appeals) erred in deleting the penalty of Rs. 11,84,314/- levied by the AO u/s 271D of the Act. Similarly, the only

ground taken in appeal no. 5690(del)/2010 is that the ld. CIT(Appeals) erred in deleting the penalty of Rs. 77,07,502/- levied by the AO u/s 271E of the Act.

2. We proceed to dispose of appeal bearing ITA No. 5689(Del)/2010 at the first instance. The ld. senior DR referred to the penalty order passed by the AO on 30.06.2009. It is mentioned that in the course of assessment proceedings it had been observed that the assessee received deposits from D.D. Township (P) Ltd. ("DD" for short) otherwise than by way of account payee cheque or draft. The details are as under:-

Date	Particulars	Description	Amount (Rs.)
20.12.2005	Shree Devi	Journal	2,50,563/-
17.02.2006	Ujjagar Singh	Journal	70,000/-
18.02.2006	Mohan Singh	Journal	2,00,000/-
18.02.2006	Sher Singh	Journal	4,13,751/-
20.02.2006	Jaswinder Singh	Journal	1,50,000/-
21.02.2006	Rajinder Kumar	Journal	50,000/-
21.02.2006	Mukhtair Singh	Journal	50,000/-

2.1 The AO issued show cause notices to the assessee on 24.12.2008 and 08.06.2009 requesting it to explain as to why penalty u/s 271D may not be levied. It was submitted that the DD made payments on behalf of the assessee for purchasing land from the farmers. The sale agreements executed in this connection show that advances were paid to them in cash.

Such payments were made by Shri J.P. Khanna, the representative of the DD, to the farmers. Corresponding entries were made in the books of the assessee crediting the DD by way of journal entries. The AO did not find the explanation to be satisfactory. Referring to the provision of section 271D, it has been held that the assessee had to accept any loan or deposit only by way of account payee cheque or draft, failing which it made itself liable for levy of the penalty. Accordingly, penalty of Rs. 11,84,314/- was levied.

2.2 Thereafter, he referred to the impugned order passed on 08.10.2010. It was submitted before the ld. CIT(Appeals) that the assessee and the DD entered into a collaboration agreement which designates the assessee as collaborator and the DD as the developer. Under the agreement, it has been agreed that lands purchased by the assessee will form the subject of project for development by the developer. All other obligations with Government authorities, financial institutions, sale etc. will be discharged by the developers. In view of this agreement, a current account was maintained by the assessee in respect of the DD. The payments made by the DD on behalf of the assessee were credited in the account and re-payments to it were also debited in this

account. The balance payable has been shown in the balance-sheet as current liabilities and provisions. It was further submitted that the developer has made payments to the farmers on behalf of the assessee through representative Shri J.P. Khanna. Shri J.P. Khanna was paid in this behalf by the developer by way of cheques. Such sale agreements had been filed before the AO and the transactions recorded in the account of the DD are supported by the purchase agreements. Thus, it was argued that the assessee has not received any loan or deposit from the DD.

2.3 The ld. CIT(Appeals) considered the facts and submissions made before him. It is mentioned that Shri J.P. Khanna has made payment to various persons on behalf of the DD. He is situated in Mohali and he received payments by way of cheques from the DD. The cheques were deposited in his account and subsequently cash was withdrawn and paid to various land owners. Since the payments were made to the land owners on behalf of the assessee, it passed corresponding entries giving credit to the DD. The entries were passed through journal. These facts show that no loan or deposit has been accepted by the assessee from the DD, which is covered u/s 269SS of the Act. Without prejudice to the aforesaid, it is mentioned that the payment of cash made by Shri J.P. Khanna to the land

owners is payment for purchase of land. Thus, the amounts did not represent loans or deposits accepted by the assessee. Further, the payment had to be made in cash failing which the land owners would not have carried through the transactions. Thus, business exigency demanded that the payments should be made to them in cash. In view of these findings, the penalty has been deleted.

3. The case of the ld. senior DR is that the chain of transactions involve the assessee, the DD and Shri J.P. Khanna. This chain has been created to camouflage the actual transaction of loan or deposit showing it to be a business transaction. It is an admitted fact that the receipts from the DD have been made otherwise than by account payee cheque or draft. There is no evidence on record that Shri Khanna had to pay money in cash to the intending sellers. Therefore, it is argued that the case of the assessee is squarely covered u/s 271D for levy of penalty.

3.1 In order to support his case, reliance has been placed on the decision in the case of Chaubey Overseas CorporationVs. CIT (2008) 303 ITR 9 (All.). In this case, one Sanjay Kumar Aggarwal asked Shree Narain and Gopal Dass, brokers of silk fabrics, for supply of special kind of silk

fabric. These brokers placed orders with the assessee for supply of silk fabric for requisite quantity. The assessee demanded a sum of Rs. 25,000/- each from the brokers as advance for supply of the requisite goods. The amount was deposited. The assessee could not arrange for silk fabrics and, therefore, returned the advance to the brokers in cash. The explanation of the assessee was that the brokers had not deposited the money on their behalf but on behalf of the traders. Therefore, the advances were received in the course of the business for sale of silk fabric. This explanation was not accepted by the AO and penalty u/s 271D was levied. The CIT(Appeals) allowed the appeal of the assessee against this order on the ground that the word "deposit" means keeping of money with a person or a bank for earning interest. Therefore, provisions of section 269D were not attracted. This order was reversed by the Tribunal by mentioning that the word "deposit" means every kind of deposit and there is no difference between a deposit, business deposit or trade deposit. The Hon'ble Court came to the conclusion that the words "any deposit" has been used to cover all sorts of deposits including trade deposits. Therefore, the mater was decided in favour of the revenue.

4. In reply, the ld. counsel furnished background facts in brief that the assessee is a company. Its accounts are liable to be audited and have been audited as such. The assessee had filed the return of income and audited accounts were enclosed with the return. The accounts have been accepted by the AO as seen from assessment order passed u/s 143(3) of the Act. In this order, no satisfaction had been recorded that provisions of section 269SS have been violated by the assessee. In fact, the assessee has not doubted in any manner whatsoever the transactions of the assessee with the DD. There is no finding either in assessment order or in the penalty order that the chain of transactions was created with a view to camouflage the transactions of loans or deposits as business transactions. No evasion of tax or attempt to evade tax has been alleged in any of these orders. As a matter of fact, the assessee has not received any loan or deposit. The transactions are in respect of development agreement with the DD. It appointed a local person to buy lands from various persons. For this purpose, the DD paid Shri Khanna certain amounts by way of cheques. The cheques were deposited in his account. The money was drawn from this account to make payment in cash to the sellers of the lands. Since the lands were purchased on behalf of the assessee through the agent of the DD, corresponding credit was given to the DD in his

current account maintained by the assessee. These transactions do not involve acceptance of any loan or deposit otherwise than by account payee cheque or draft. The transactions are recorded by way of journal entries, therefore, no money in cash has been received by the assessee from the DD. The ld. CIT(Appeals) considered all these facts. Thereafter, he came to the conclusion that it was not a fit case for levy of penalty u/s 271D of the Act.

4.1 In order to support his case, the ld. counsel has relied on a number of decided cases. In the case of CIT Vs. Noida Toll Bridge Co. Ltd., (2003) 262 ITR 260, the Tribunal had deleted the imposition of penalty u/s 271D by observing that :

- the transaction is by an account payee cheque,
- no payment on account is made in cash by the assessee or on its behalf,
- no loan has been accepted by the assessee in cash, and
- the payment of Rs. 4.85 crore has been made through IL&FS, which holds more than 30% of the paid up capital of the assessee by journal entries by crediting the account of IL&FS.

The Hon'ble Court observed that aforesaid findings are finding of facts and that it is in agreement with the Tribunal that provisions of section 269SS are not attracted. Neither the assessee nor IL&FS had made any payment in cash. In such circumstances, the order of the Tribunal does not give rise to any question of law.

4.2 In the case of CIT Vs. Kharaiti Lal & Co. (2004) 270 ITR 445, the Tribunal deleted the penalty u/s 271D by observing that the assessee received an amount of Rs. 6,49,344/- as an advance for purchase of truck and this amount was adjusted against the value of the truck. The Hon'ble Court came to the conclusion that the findings were of fact. The amount received by the assessee was in the form of advance and not a loan as alleged by the department. Therefore, provisions of section 269SS are not attracted. In the case of CIT Vs. Saini Medical Store (2005) 277 ITR 420 (P&H), the CIT(Appeals) had accepted the explanation of the assessee that the breach of the provision was on account of bona fide belief of the assessee and the same was not with any intention to avoid or evade the tax. These findings were confirmed by the Tribunal. The cause shown by the assessee was held to be a reasonable cause by the CIT(Appeals) and the Tribunal. The Hon'ble Court inter-alia considered the decision in the case of Hindustan Steel Ltd. Vs. State of Orissa, (1972) 83 ITR 26 (S.C.) and

came to the conclusion that the findings of the CIT(Appeals) and the Tribunal are in the nature of findings of fact based on appreciation of material on record. These findings do not lead to any question of law. In the case of CIT Vs. Natvarlal Purshottamdas Parekh (2008) 303 ITR 5 (Guj.), one of the arguments which found favour with the Tribunal was that the assessee was prevented by a reasonable cause in the light of affidavit of Shri J.B. Shah, an advocate and Income-tax Practitioner having standing of 33 years as gentleman, who had opined that the assessee would not violate the provisions of sections 269SS and 269T if he receives amounts from the family members and repays to different family members. The Hon'ble Court mentioned that these findings are based on appreciation of evidence. Whether the evidence is correctly appreciated or not, the position of law is that it does not give rise to a question of law unless such findings are contrary to evidence on record or the findings are recorded by omitting to consider relevant evidence or taking into account irrelevant evidence. Thus, no question of law arises from the finding of the Tribunal. In the case of Laxmi Trust Company (2008) 303 ITR 99 (Mad.), the Commissioner (Appeals) had deleted the penalty levied under sections 271D and 271E by recording a finding that transactions of loan are genuine and the identity of the lender is not in

doubt. Based upon this finding, the Tribunal held that there was no intention on the part of the assessee to infringe the provisions contained in section 269SS and 269T. The Hon'ble Court concurred with the Tribunal that once transactions are found to be genuine, which is a finding of fact, no question of law arises from the order. In the case of CIT Vs. Sunil Kumar Goyal (2009) 315 ITR 163 (P&H), the Hon'ble Court referred to its own decision in the case of Saini Medical Store (supra), in which it was inter-alia mentioned that there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment. Even if there is any ignorance, which resulted in infraction of law, the default is technical and venial which does not prejudice the interest of the revenue as no tax avoidance or evasion is involved. As such explanation has been accepted by the Tribunal and it came to the conclusion that the assessee having undertaken transactions with the sister concern showed that reasonable cause existed, no question of law is involved.

5. In the rejoinder, the ld. DR submitted that the decision in the case of Noida Toll Bridge Co. Ltd. (supra), is not applicable to the facts of the case as material findings were recorded that no payment was made in cash by the assessee or on its behalf and IL&FS, who made the payment,

held more than 30% paid up capital of the assessee. Further, it is submitted that the genuineness of loan is not a relevant consideration as held in the case of Thenamal Chhajjer Vs. JCIT, (2005) 96 ITD 210 (Chennai). It is also submitted that it is not incumbent on the AO to record any satisfaction in the assessment order, as held in the case of Cargill India (P) Ltd. Vs. Deputy CIT (2008) 110 ITR 616 (Del); and ACIT Vs. Vinman Finance & Leasing Ltd. (2008) 115 ITD 115 (Vishakhapatnam) (TM).

6. We have considered the facts of the case and submissions made before us. The facts are that the assessee entered into a collaboration agreement with the DD for purchase of land on its behalf and development thereof by the developer. The developer purchased lands from farmers on behalf of the assessee through its agent, Mr. J.P. Khanna. In lieu of the consideration paid by the DD, its account was credited by way of journal entries, the details of which have already been furnished. Shri J.P.Khanna had made payments in cash to the sellers of the lands in order to effect purchases. The question is whether provisions of section 269SS are violated and the assessee is liable to be penalized u/s 271D of the Act?

6.1 The decision in the case of Noida Toll Bridge Co. Ltd. (supra) is not applicable to the facts of this case as the representative of the DD has made payment in cash to the sellers of land on behalf of the assessee. The decision in the case of Saini Medical Store (supra) lays down that the penalty can be levied only after hearing the assessee. If the Tribunal comes to the conclusion that there is bona fide explanation, the penalty may not be levied if there is a venial breach of the provision. In that case a plea was taken that the transactions were not undertaken with any intention to avoid or evade tax, which was held to be a reasonable cause. However, the question of showing reasonable cause will be decided on the facts of each case. In other words, the plea that there was no avoidance or evasion of tax will not on its own lead to the deletion of the penalty. In the case of Kharaitilal & Co. (supra), the amount accepted by the assessee was in respect of sale of a truck. The transaction was held to be undertaken in the course of the business and not transaction of a loan or a deposit. In the case of CIT Vs. Idhayam Publications Ltd. (2006) 285 ITR 221 (Mad.), relied upon by the ld. counsel, it has been held that it is for the revenue to establish that the assessee received a loan or a deposit as understood u/s 269SS. The assessee had received cash loan of Rs. 2,94,000/- from a sister concern in respect of which the penalty

was levied. The Hon'ble Court held that transaction between the assessee and director-cum-shareholder is not a transaction of a loan or a deposit. The account was in the nature of a current account on which no interest was charged. Therefore, the deletion of penalty by the Tribunal was justified. The revenue has relied on the decision in the case of Chaubey Overseas Corporation (supra), in which it was held that deposit also includes within its ambit a trade deposit.

6.2 When we look to the provision contained in section 269SS, the term "loan or deposit" has been defined to mean loan or deposit of money. In this case, the assessee has not accepted any deposit from the DD by way of money in cash. It has credited the account of the DD in respect of purchase consideration paid on its behalf by the DD through Mr. J.P. Khanna. The entries are made by way of journal entries. From this fact, it becomes clear that the credit has been given for purchase of lands. The lands were purchased in the course of business of developing them in association with the DD. Therefore, the transactions are in the nature of business transactions, recorded through the current account. The DD was subsequently paid through this account. Thus, it is not a case of accepting loan or deposit. Rather, it is a case of carrying out business transaction for purchase of land and making payment thereof. Further, the

transactions have been found to be genuine and no part of the amount has been found to be unexplained money. It has no where been recorded in the assessment order or the penalty order that the transactions were undertaken with a view to avoid or evade payment of tax. It is no doubt true that proof of genuineness of loan does not absolve the assessee from levy of penalty, as held in the case of Thenamal Chhajjer (supra), the fact remains that it is one of the relevant factors to be taken into account for coming to the conclusion as to whether the explanation tendered by the assessee is bona fide or not. Further, it is true that the section does not provide for recording of any satisfaction for initiation of penalty, yet the penalty order must disclose as to why the explanation of the assessee that the transactions were undertaken in the course of business was not acceptable. Therefore, we are of the view that the assessee had tendered explanation in regard to transactions, the circumstances in which payments were made in cash by Shri J.P. Khanna, and such explanation ought to have been taken as a bona fide explanation. The transaction is also not one of loan or deposit. In these circumstances, we are of the view that the ld. CIT(Appeals) was right in deleting the penalty.

7. Coming to the penalty levied u/s 271E, the A.O. has noted the following transactions:-

Date	Particulars	Description	Amount (Rs.)
29.12.2005	Shyambir	Journal	2,23,125/-
29.12.2005	Bhim Singh	Journal	2,23,125/-
20.1.2006	Rajvati	Journal	13,20,500/-
20.1.2006	Ramphal	Journal	27,69,250/-
20.1.2006	Shankar	Journal	2,50,563/-
20.1.2006	Kham Chand	Journal	2,50,563/-
20.1.2006	Mula	Journal	2,50,563/-
20.1.2006	Shanti	Journal	5,55,750/-
20.1.2006	Somdutt?Nakul	Journal	5,09,125/-
20.1.2006	Jagdish/Kela Devi	Journal	8,73,125/-
20.1.2006	Shree Devi	Journal	2,50,563/-
31.01.2006	Profit Agreements rights	Journal	2,31,250/-

7.1 These amounts represent repayments to the DD by way of journal entries. It has been held that the payments have been made otherwise than by account payee cheque or draft. The position of payments is same as acceptance of loan. These transactions have been recorded in the current account of the DD maintained in the books of the assessee. The

submissions of rival parties are identical with the submissions made in respect of penalty u/s 271D. The only difference we find is that the words "loan or deposit" have been defined in section 269T to mean any loan or deposit of money which is repayable after notice or repayable after a period and, in case of person other than a company, includes loan or deposit of any nature. The latter part of the definition is not applicable in the case of the assessee as it is a company. The orders of lower authorities no where show that the money was repayable after notice or after a period of time. This is an additional factor in favour of the assessee. Relying on our order in respect of levy of penalty u/s 271D, it is held that the ld. CIT(Appeals) rightly deleted this penalty also.

8. In the result, both the appeals are dismissed.

Sd/-
(C.M. Garg)
Judicial Member

Sd/-
(K.G. Bansal)
Accountant Member

SP Satia

Copy of the order forwarded to:-

Forging Ltd., New Delhi.

DCIT, Circle 11(1), New Delhi.

CIT(A)

CIT,

The D.R., ITAT, New Delhi.

Assistant Registrar.