

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No. 282/Ahd/2021**

**निर्धारणवर्ष/Assessment Year: 2016-17**

Love Shoppers Ltd., 10 <sup>th</sup> Floor, Broadway Business Centre, Opp. Mayor's Bungalow, Near Law Garden, Ellisbridge, Ahmedabad-380006 PAN : AAACL 5963 A	Vs.	Addl. Commissioner of Income-tax, Range-2(1), Ahmedabad
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Suresh Gandhi, AR
Revenue by :	Shri Atul Pandey, Sr DR

**सुनवाई की तारीख/Date of Hearing : 28.02.2023**

**घोषणा की तारीख /Date of Pronouncement: 19.05.2023**

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 26.08.2021 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], confirming the levy of penalty under Section 271D of the Act, for the Assessment Year (AY) 2016-17.

2. The assessee has challenged the levy of penalty raising the following grounds:-

*"1. The Ld. CIT(A) has erred in law and on facts in confirming the penalty of Rs.13,25,000/- u/s 271D of the Act for the alleged contravention of the provisions of Section 269SS of the Act without proper consideration and appreciation of the facts and the submissions. In view of the elaborate*

*submission coupled with the legal decisions relied upon in support thereof, the penalty of Rs.13,25,000/- u/s 271D of the Act is required to be deleted.*

*2. The Ld. CIT(A) has erred in law and on facts in not following the legal ratio laid down in various legal decisions relied upon, which is squarely applicable to the case of the assessee company. The Ld. CIT(A) ought to have allowed the appeal of the assessee based on the legal decisions relied upon."*

3. As transpires from the orders of the authorities below, the penalty in the present case has been levied by the Assessing Officer under Section 271D of the Act for contravention of the provisions of Section 269SS of the Act, accepting loans and advances beyond the prescribed limit through modes other than by way of account payee cheques. In the present case, the contravention of the provisions of Section 269SS of the Act took place on account of accepting cash loans from the director of the assessee-company Shri Kamal Sonwani on various dates, amounting in all to Rs.13,25,000/-, as per the details reproduced in page No.3 of the CIT(A)'s order as under:-

SN	Cash accepted from	Amount	Date of acceptance	Day	Remark
1	Shri Kamal Sonwani	5,00,000	15.06.2015	Monday	
2	Shri Kamal Sonwani	2,75,000	15.09.2015	Tuesday	
3	Shri Kamal Sonwani	2,75,000	15.11.2015	Sunday	Unsecured Loan
4	Shri Kamal Sonwani	2,75,000	15.01.2016	Friday	
	Total	13,25,000			

4. The arguments of the learned Counsel for the assessee against the levy of penalty were two fold i.e. (i) that the genuineness of the transactions was not doubted and (ii) that the cash was taken for meeting business exigencies of paying salaries to employees. Reliance was placed on the following case-laws in support of the proposition that where the genuineness of loans taken in cash was not doubted and sufficient cause was adduced for so taking the loan, there was no violation of the provisions of Section 269SS of the Act and, therefore, no penalty could be levied under Section 271D of the Act.

- i. Hareshkumar Bechardas Patel Vs. Jt. CIT (2019) 69 ITR 73 (SN) (Ahd.) (Trib.), in ITA No. 2996/Ahd/2016
- ii. ITO Vs. M/s. Bhandari Precession Forgings (P) Ltd. (Bangalore ITAT) in ITA No. 777 & 778/Bang/2010
- iii. JICE Academy for Excellence Pvt. Ltd. Vs. NFAC (ITAT Bangalore) in ITA No.704/Bang/2022
- iv. CIT Vs. Bhagwatiprasad Bajoria, 263 ITR 487 (Guwahati HC)
- v. CIT Vs. Idhayam Publications Ltd., 285 ITR 221 (Madras HC.)

5. The learned Departmental Representative, on the other hand, drew our attention to the findings of the authorities below with respect to both the contentions. With respect to the contention of the learned Counsel for the assessee that the transaction was genuine and therefore there was no violation of the provisions of Section 269SS of the Act, it was contended by the learned DR that the genuineness was not a material consideration and the moment any loan or advance was accepted in cash, it tantamount to the violation of the provisions of Section 269SS of the Act. Reliance was placed on the following decisions in this regard:-

- i. Deepak Sales & Properties (P) Ltd. Vs. ACIT, (2018) 194 TTJ 690, (ITAT Mumbai);
- ii. Listin Stephen Vs. DCIT, (2019) 418 ITR 524 (Ker.)
- iii. Al Ameen Educational Trust Vs. CIT, (2021) 283 Taxman 285
- iv. Vasan Healthcare (P.) Ltd. Vs. Addl. CIT, Chennai, (2021) 278 Taxman 273

As for the reasonable cause adduced by the learned Counsel for the assessee that the cash was required for meeting business requirements, the learned DR drew our attention to the findings of the Assessing Officer contradicting this stand of the assessee at page 4 of the learned CIT(A)'s

order as under, wherein the Assessing Officer had noted that the cash loan had been taken on 4 occasions and the bank statements of the assessee shown sufficient balance in the bank accounts of the assessee on those dates; therefore, business urgency was ruled out in such cases.

*"1. It is seen from above table that cash loan has been taken on four occasions, and the bank statements of the assessee company show that there existed sufficient balance in the bank accounts of the assessee on the date of acceptance of cash loan. (Annexure-A). Presence of sufficient balance in the bank accounts (more than the cash loan taken) does not support the argument of Assessee Company.*

*2. Further, 3 out of 4 days of cash loan transaction were working days for banks (as seen from the table above), and net banking facilities being available round the clock, also does not support the argument of the assessee company that these loans were taken for emergency payments."*

6. The learned DR further relied on the order of the learned CIT(A) and also drew our attention to paragraph Nos.5.4 to 5.7 of learned CIT(A)'s order as under:-

*"5.4 In this case, the appellant company received the unsecured loan of Rs.13,25,000/- in cash from one of its directors. The same was repaid in cash on different dates to the said director during the FY 2015-16. The appellant has contended that the appellant company and the director are closely related party and the genuineness of the transaction is also not under dispute. The appellant placed reliance on the following decisions:*

- i) Gujarat High Court decision in the case of CIT vs Shree Ambica Flour Mills 6 DTR 169 (Guj).*
- ii) CIT, Faridabad, vs Sunil Kumar Goel (ITA No. 177 & 178 of 2009 dated 03/03/2009. P&H High Court)*
- iii) Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs State of Orissa (1970) AIR 253*

*5.5 The decision of the Hon'ble Gujarat High Court decision in the case of CIT vs Shree Ambica Flour Mills 6 DTR 169 (Guj) has already been discussed by the Range Head in the impugned order at para 5.1 and I agree with his findings.*

5.6 Further, in the case of CIT, Faridabad, vs Sunil Kumar Goel, it is mentioned that there should be a reasonable cause for accepting payment in cash rather than account payee cheque but in the present case the facts are not the same.

5.7 Further, the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs State of Orissa deals with mere technicality of an offense. The Hon'ble Apex Court observed that where the offence is merely technically, even if the minimum penalty is prescribed, the authority should not impose penalty. However, in the instant case, cash was accepted from the director 4 times, so the appellant is in habit of showing disregard to the provisions so it cannot be said to be a mere technicality. The appellant has to show reasonable cause in which the appellant has failed i.e. the appellant has not been able to show reasonable cause. In view the above, the penalty imposed is confirmed, accordingly Ground No. 1 of the appeal is DISMISSED."

7. We have heard rival contentions. The issue before us relates to levy of penalty for accepting loan and advances in cash in violation of provisions of Section 269SS of the Act. The assessee having accepted loans of Rs.13,25,000/- in cash from its director on four occasions as listed above. We do not find any merit in the arguments of the learned Counsel for the assessee which, we find, have been adequately dealt with in accordance with law by the authorities below. The contention of the learned Counsel for the assessee that, in view of the fact that the *bona fides* of the transactions were not doubted, the provisions of Section 269SS of the Act were not attracted; we are not convinced with the same since as per the plain reading of the provision of Section 269SS does not provide an exception to genuine transactions for the invocation of the said section. The provisions of Section 269SS of the Act are reproduced hereunder:-

**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.** – 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.*

8. The literal reading of the above shows that any amount received by modes other than cheques, as loans or advances, results in violation of the provisions of Section 269SS of the Act. There is no question of genuineness or *bona fides* of the transactions coming into picture. Therefore, this pleading of learned Counsel for the assessee is bereft of any merit. Our view is supported by the various decisions cited by the learned DR before us as above - by the ITAT Mumbai Bench in the case of Deepak Sales & Properties (P) Ltd. (supra) categorically holding that for escaping from the rigors from the Section 269SS of the Act, establishing genuineness or *bona fides* of the transactions is not sufficient. Similar decision was rendered by the Hon'ble Kerala High Court in the case of Listin Stephen (supra) and also by the Hon'ble Apex Court in the case of Vasan Healthcare (P) Ltd. (supra) and Al Ameen Educational Trust (supra).

9. The pleading of the learned Counsel for the assessee that the cash was required to meet urgent business requirements is also negated by the findings of fact by the Assessing Officer that the assessee had sufficient funds in its banks accounts on the day it took cash loans from the directors and the days on which the expenses were made were bank working days; so the plea of the assessee that the cash loans were taken to meet the shortage of funds stands negated by this finding of fact by the Assessing Officer which has remained uncontroverted before us. Clearly, therefore, the assessee was unable to establish any reasonable cause for taking cash loans also so as to escape from the levy of penalty under Section 271D of the Act in view of Section 273B of the Act. All the case laws relied upon by the Ld. Counsel for the assessee deleting penalty levied u/s 271D of the Act finding reasonable cause adduced by the assessee for accepting cash loans. In the absence of any reasonable cause in the present case, the said case laws are of no assistance to the assessee.

10. In view of the above, in the absence of any case made out by the learned Counsel for the assessee to escape from the rigors of Section 269SS/271D of the Act, we dismiss the appeal of the assessee and uphold the order of the learned CIT(A) confirming levy of penalty under Section 271D of the Act of Rs.13,25,000/-.

11. In effect, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 19/05/2023 at Ahmedabad.**

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 19/05/2023

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Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
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