

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1927/Ahd/2019
Assessment Year 2014-15**

The DCIT, Circle-4(1)(1), Ahmedabad (Appellant)	Vs	Sanjaykumar Haribhai Patel, 401 Shubham Complex, Opp Navrangpura Derasar, Navrangpura, Ahmedabad-380009 PAN: ALQPP3785L (Respondent)
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**Assessee by: Shri Sanjay Devadiya &
Shri Sandeep Kothari, A.Rs.
Revenue by: Shri Atul Pandey, Sr. D.R.**

Date of hearing : 04-07-2023
Date of pronouncement : 19-07-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order of Id. CIT(A)-8, Ahmedabad, in proceeding u/s. 271D vide order dated 24/10/2019 passed for the assessment year 2014-15.

2. The Revenue has taken the following grounds of appeal:-

“1. Whether the Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs. 38,00,000/- u/s. 271D of the Income-Tax Act, 1961.”

3. The brief facts of the case are that the assessee took a loan of ₹ 44,70,000/- from Shri Milap Jadeja and of ₹ 16 lakhs from M/s Shiv Castings, which is the proprietorship concern of Shri Milap Jadeja. Thereafter, the assessee merged both the accounts, since both the accounts pertained to the same person i.e. Shri Milap Jadeja. The assessing officer initiated penalty under section 271D of the Act for violation of the provisions of section 269SS of the Act, which prescribed that no person shall take any loan or deposit otherwise than by account payee cheque/demand draft/or through electronic clearing system. As per the assessing officer, assessee accepted the loan of ₹ 38 lakhs by squaring up the account of Shri Milap Jadeja with his proprietorship concern, and hence the same amounted to violation of the provisions of section 269SS of the Act.

4. In appeal, the assessee submitted that they have not received any loan either from Shri Milap Jadeja or M/s Shiv Castings, otherwise than by way of account payee cheque and all the loans were received by cheque only. It was submitted that the assessing officer has not brought anything on record to substantiate that anything was received otherwise than by way of account payee cheques.

5. The Ld. CIT(Appeals) allowed the appeal of the assessee by observing that in the instant facts, all the amounts were received by way of account payee cheques and the amounts so received were deposited in the bank account of the assessee. Therefore, since the assessee has not received any amount otherwise than by account payee cheques and has only merged the accounts of Shri Milap Jadeja and his proprietorship concern namely M/s Shiv Castings, there is no violation of section 269SS of the Act, as far as obtaining the loans is concerned. The Ld. CIT(Appeals) made the following observations while allowing the appeal of the assessee:

“5. I have carefully considered the impugned penalty order as well as the submissions made by the appellant. Sole ground of appeal pertains to penalty amounting to Rs.38 lac imposed by the Addl.CIT, Range-4(1), Ahmedabad u/s.271D of the Act, Facts of the case are that on receipts of proposal from the AO namely DCIT, Circle-4(1)(1), Ahmedabad, the Addl.CIT, Range-4(1), Ahmedabad initiated penalty u/s.271D of the Act. for violation of the provisions of Section 269SS. Provisions of Section 269SS prescribe that no person shall take or accept from any other person any loan or deposit or any specified sum otherwise than by a/c payee or a/c payee demand draft or through electronic clearing system amounting to Rs.20,000/- or above. Violation of provisions attracts u/s.271D of the Act which of the equivalent amount of such or deposits, in the case at hand, appellant has accepted loan of Rs. 44,70,000/- from one Shri Milap Jadeja and Rs.16 lac from his(Milap Jadeja) proprietorship namely M/s. Shiv Castings and merged both: the accounts, since both the accounts pertain to one person only. As per; the Addl.CIT, Range-4(1), Ahmedabad, has accepted the loan of Rs.38 lacs by squaring up air the account of Shri Milap Jadeja with] his proprietorship concern and hence the amount to violation of the provisions of Section 2.69SS of the Act. In the course of proceedings, appellant contended that they have not received any loan either from Shri yilap Jadeja or M/s. Shiv Castings otherwise other than by way of account payee cheque and ail the loans were received by cheque only. On careful consideration, I

find that appellant has received a sum of Rs. 44,70,000/- from Shri Milap Jadeja and Rs.16 lac from M/s.SJhiv Castings which is a proprietorship concern of Shri Milap Jadeja. All the amounts were received by way of account payee cheque and in Account No.08122000010521, This fact was also before the Addl.CIT, Range-4(1), Ahmedabad and has reproduced the reply of the appellant containing these facts on Page No.2 of the impugned Penalty Order. The reply of the appellant on facts is not controverted. Since the appellant has not received any amount otherwise than by account cheque and only merged the accounts of Shri Milap Jadeja proprietorship concerns namely Shiv Casting, there is no violation of section 269SS as far as obtaining the loans is concerned. Under these facts and following the ratio of relied upon judgements, the penalty imposed is not found justified and hence the same is deleted. Sole ground of appeal is allowed.

6. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) allowing the appeal of the assessee. On going through the facts placed on record, we observe that admittedly no amount was received by the assessee otherwise than by way of account payee cheques. This fact was also noted by the Ld. CIT(Appeals) while passing the appellate order. It is not the case of the Department that any amount otherwise than by way of account be cheques was received by the assessee. The only ground/basis for imposing penalty under section 271D of the Act was that both the accounts of the lender and his proprietorship concern were merged, leading to violation of the provisions of section 269SS of the Act. However, since in the instant facts, no amount otherwise than by way of account payee cheques was received by the assessee, we do not find any error in the order of Ld. CIT(Appeals), so as to call for any interference.

7. In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on 19-07-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 19/07/2023

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद