

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 405/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16.

Shri Ram Kishan Verma, C/o Mahendra Gargieya & Associates, Advocates & Tax Consultants, 537-539, 5 th Floor, Mahima's Trinity, Near Jyoti Rao Phule College, New Sanganer Road, Jaipur.	बनाम Vs.	The Additional CIT, Range-1, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. ADDPK 1093 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya &
Shri F. Rahman (Advocates)

राजस्व की ओर से/ Revenue by: Shri Ranjan Kumar (CIT)

सुनवाई की तारीख/ Date of Hearing : 27.05.2019.
घोषणा की तारीख/ Date of Pronouncement : 03/07/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 22nd January, 2019 of Id. CIT (A) Kota arising from the penalty order passed under section 271D of the I.T. Act for the assessment year 2015-16. The assessee has raised the following grounds :-

1. The impugned penalty order dated 11.10.2017 passed u/s 271D is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same deserves to be fully quashed.

2. The impugned penalty order dated 11.10.2017 u/s 271D is bad in law and on facts of the case, being barred by limitation. Hence, the same deserves to be fully quashed.

3. The Id. CIT(A), Kota committed grave error of law and of facts in confirming the impugned penalty u/s 271D which was illegally imposed based on an action, which was not initiated during the course of any proceeding pending before the Id. Addl. CIT, Range-1, Kota. The absence of the proceedings being a condition precedent any action taken for the initiation of the impugned penalty, is completely without jurisdiction and deserves to be fully quashed.

4. The Id. CIT(A), Kota seriously erred in law as well as on the facts of the case in not at all appreciating and rather ignoring that the Id. Addl. CIT had utterly failed to establish that the appellant had legally and/or factually taken or accepted a loan in cash and there was absolutely no iota of evidence to establish the factum of taking or accepting a loan in cash in violation of the provisions of sec. 269SS of the Act. The impugned penalty, so imposed and confirmed therefore deserves to be fully quashed.

5.1 The order of the Id. CIT(A), Kota is completely illegal and being in utter violation of the principles of natural justice as also the express provisions contained in Rule 46A of the Income-tax Rules, 1962 in as much as he used and relied on material, which was never confronted to the appellant and no opportunity whatsoever was ever afforded to rebut the same.

5.2 The Id. CIT(A), Kota erred in law as well as on the facts of the case in introducing and relying on new material ex-parte while confirming the impugned penalty, which was not relied upon even by the authority imposing the penalty, i.e. the Id. Addl. CIT, Range-1, Kota, hence the impugned penalty deserves to be deleted in full or alternatively, the order of the Id. CIT(A) has to be considered ignoring the additional evidences illegally considered by him.

6. The impugned orders passed u/s 271D and confirmation thereof by the Id. CIT(A) imposing a huge amount of penalty of Rs. 15 crores is highly perverse being in the utter disregard of the detailed submissions and the precedents cited before them, in absence of direct and cogent evidences in their support, against the normal human conduct & the prevailing trade practices, particularly in respect of the matters of penalty and hence, deserves to be fully quashed.

7. The appellant prays your honour's indulgence to permit add, amend or alter all or any of the Grounds of the Appeal on or before the date of hearing.

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2. The assessee is an Individual and derives income from salary as Managing Director of a closely held company, income from house property, income from interest and other sources. There was a search and seizure action under section 132 of the IT Act on 19.12.2014 in case of one Shri D.P. Sehgal, Jaipur. During the said search and seizure proceedings, a letter signed by the assessee in respect of the loan of Rs. 15 crores from Shri D.P. Sehgal along with the 15 un-named and

undated cheques of Rs. 1 crore each signed by the assessee were found. An enquiry was also conducted from the assessee during the assessment proceedings in case of Shri D.P. Sehgal wherein the assessee denied having received any alleged cash loan of Rs. 15 crores from Shri D.P. Sehgal and explained that the said letter was an advance acknowledgement along with the security in the shape of cheques for seeking loan. However, subsequently the loan was not taken from Shri D.P. Sehgal but the assessee received the loan from some financial institution. Thereafter, a search and seizure action under section 132 of the IT Act was also carried out on 07.09.2017 in case of the assessee. During the search and seizure proceedings, statement of the assessee was recorded under section 132(4) on 07.09.2017 wherein the assessee admitted the transaction of cash loan of Rs. 15 crores from Shri D.P. Sehgal. In the meantime, the AO issued a show cause notice dated 1st September, 2017 for imposing the penalty for violating the provisions of section 269SS on account of receiving cash loan of Rs. 15 crores in the month of May-June, 2014. The AO imposed the penalty of Rs. 15 crores vide order dated 11.10.2017 passed under section 271D by holding that the assessee has taken loan of Rs. 15 crores in cash in violation of provisions of section 269SS of the IT Act. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that the incriminating material which is the basis of levy of penalty in question was found in the proceedings of search under section 132 of the IT Act carried on 19.12.2014 in case of Shri D.P. Sehgal. However, the said letter and blank cheques as well as promissory notes were given by the assessee only for taking the loan as a pre-condition but since the assessee in the meantime received the loan from AU Finance

Ltd. on 30th July, 2014, therefore, the said request for loan from Shri DP Sehgal or through Shri DP Sehgal was not pursued further. Even in the statement recorded under section 132(4), Shri DP Sehgal has denied the fact of giving the alleged loan to the assessee but he explained that since he could not arrange the money and finally in the month of August, 2014 he expressed his inability to provide any loan. The Id. A/R has further submitted that the documents found during the search in case of Shri DP Sehgal would not prove the transaction of loan of Rs. 15 crores received by the assessee from/through Shri DP Sehgal but it was at the initial stage of request made by the assessee and, therefore, the alleged acknowledgement and security in the shape of cheques and promissory notes were given by the assessee in advance as a condition for grant of loan but there was no loan taken by the assessee as against these documents found from Shri DP Sehgal. Once the assessee has not taken any alleged cash loan from Shri DP Sehgal, the question of violating the provisions of section 269SS of the IT Act does not arise and consequently levy of penalty under section 271D is not sustainable. The Id. A/R has submitted that the impugned penalty order passed by the AO is clearly barred by limitation. There is no specific time limit mentioned for initiation of proceedings. However, the limitation is provided under section 275 for completion of the proceedings. Therefore, even if there is no limitation provided for initiation of proceedings, it is not available for indefinite period but the limitation provided for other similar actions can be taken as a reasonable time limit for the purpose of levy of penalty under section 271D of the IT Act. He has further contended that the department is bound to exercise the powers within the reasonable time as held by the Hon'ble Kerala High Court in case of K. Iswara Bhat vs. Commissioner of

Agricultural Income Tax, 200 ITR 238 (Ker.). Therefore, even in the absence of a time limit prescribed by the Statute, the repository of the power should initiate the proceedings within a reasonable time within which the proceedings are to be completed. The Id. A/R has also referred the decision of Hon'ble Supreme Court in case of State of Gujarat vs. Patel Raghav Natha, AIR 1969 SC 1297 wherein the Hon'ble Supreme Court has held that the suo moto power of revision can be exercised within a reasonable time even in the absence of time limit prescribed by the statute. In the case in hand, the AO has initiated the proceedings by issuing show cause notice dated 1st September, 2017. However, since the proceedings are not in consequence of any assessment order in the case of the assessee, then the reckoning of the limitation should be from the search proceedings in case of Shri DP Sehgal. The Id. A/R has then submitted that the initiation of penalty proceedings is not based on any action or proceedings under the Income Tax Act in case of the assessee and hence the initiation itself is illegal and bad in law. In support of his contention, he has relied upon the decision in case of Sharda Educational Trust vs. ACIT, 99 TTJ 212 (Agra). The Id. A/R has further contended that the penalty under section 271D is governed by section 275(1)(c) of the IT Act and for initiation of penalty there must be some proceedings on the basis of which action for imposition of the penalty has been initiated. Thus in the proceedings under the Act if the AO is satisfied that the assessee has violated the provisions of section 269SS, then the proceedings for levy of penalty under section 271D can be initiated by the AO and the limitation would reckon from the completion of such proceedings. Only those proceedings which are relevant for the purposes during the course of which the AO felt satisfied regarding the default for which the penalty was provided to be imposed

will be relevant proceedings. Thus in case of the assessee when no proceedings were initiated by the AO during which the AO was satisfied about the violation of provisions of section 269SS, then the initiation of the proceedings are illegal. He has relied upon the decision of Hon'ble Rajasthan High Court in case of CIT vs. M.A. Prestressed Works, 220 ITR 226 (Raj.). The Id. A/R has also relied upon the following decisions :-

Noble Pictures vs. Jt. CIT
84 TTJ 718 (Coch.)

CIT vs. Hissaria Bros
291 ITR 244 (Raj.)

Kailashben Manharlal Chokshi vs. CIT
328 ITR 411 (Guj.)

Thus the Id. A/R has submitted that the impugned order passed by the AO is barred by limitation and liable to be quashed. Even on the merits, when there is no default on the part of the assessee of violating the provisions of section 269SS as the assessee has not taken any cash loan alleged by the AO, then the levy of penalty on the basis of suspicion is not justified. The Id. A/R has submitted that until and unless a default under section 269SS is found to be committed by the assessee, there cannot be a presumption of such violation. The assessee cannot be asked to prove the negative of the assessee's alleged transaction but the onus is on the department to prove and establish beyond doubt that the assessee has taken the loan in cash in violation of section 269SS. It is settled law that what is apparent is real unless controverted. The onus lay upon the person, who alleges that what is apparent is not real. The Id. A/R referred the decision of Hon'ble Supreme Court in the case of CIT (Central) vs. Daulat Ram Rawatmull, 87 ITR 349 (SC), followed in

case of CIT vs. Bedi & Co. Pvt. Ltd., 230 ITR 580 (SC). In the present case, what was apparent was that both the parties have denied to accept /paid loan. Shri DP Sehgal denied that he could not arrange fund for the assessee Shri Ram Kishan Verma. Similarly, Shri Ram Kishan Verma denied that he never received cash loan from Shri D.P. Sehgal. If, such an apparent state of affair, was alleged to be unreal, it was for the person making such allegation to prove that what is apparent is not real. Unfortunately, the lower authorities have totally failed to prove contrary. He has also referred to section 103 of Evidence Act and submitted that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. The Id. A/R further submitted that " In our context, since the penalty was to be levied on the fact of having taken loan, and that too in cash, the person levying penalty is required to prove that the offending act took place. The Officer simply ignored the law of the land. This is not an insignificant or a minor law but very fundamental principle of administration of justice. On this rule is based the maxim that everyone is innocent till proved otherwise. We are part of 'presumptive system' of jurisprudence and not 'accusatory system'. In presumptive system, the accused is presumed to be innocent till proved otherwise. It is true that at times, the Legislature has provided for presumptions for inflicting liabilities on citizens, but such presumptions are specific and limited. Whenever the legislature deemed it desirable, it provided for presumption of mens rea or presumption of existence of a state of affairs. There cannot be, and there is no presumption in respect of offending act prescribed under section 269SS / 271D. Therefore, it was the burden of penalizing authority to prove that the said offending act was committed. He having failed to do

so, and instead casting the burden on the appellant to prove his innocence, committed a grave mistake of law.” The Id. A/R submitted that the provisions of section 269SS are specific and categorical. They unmistakably and unambiguously require the concerned authority to establish that the noticee has taken or accepted a loan in cash. Taking or accepting a loan, presupposes a valid contract under the provision of India Contract Act, 1872 and the basic minimum requirement of there being a valid contract therefore, must exist, as per Sec. 2(a) of India Contract Act, 1872, when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. In other words, there has got to be two contracting parties who have come together and the lender has on its own volition agreed to lend a certain amount to the borrower on certain agreed terms & conditions etc. and so on. However, in the present case the seized documents, which are based for the allegation of cash loan received by the appellant, materially lacks the vital aspects in as much as, admittedly, neither the lender Mr. DP Sehgal has signed nor anybody else for that reason, if had he/they granted the loan to the assessee. Therefore, firstly, it was not an executed contract or it was a mere proposal which is yet to be acted upon. Thus, based on the seized documents, which are seriously lacking in material legal aspect, the undated promissory notes and cross account payee cheques etc., there did not exist any legally enforceable agreement and in any case, Mr. DP Sehgal the alleged lender could not have compelled the alleged borrower assessee to pay back the loan, if any given. Interpreting the provision of Section 269SS from the angle of the assessee borrower alone is fallacious, unless there is a completed loan transaction between the two

parties which is legally enforceable, section 269SS cannot be applied. He has relied upon the decision of Coordinate Bench of this Tribunal in case of DCIT vs. Rajat Agarwal, 144 TTJ 753 as well as decision of Mumbai Bench of the Tribunal in case of A. Phiroj & Co. vs. CIT, 59 ITR 645, decision of Hon'ble Delhi High Court in case of CIT vs. S.M. Agarwal, 293 ITR 43 (Del.). The Id. A/R has referred to the statement recorded under section 132(4) of Shri DP Sehgal and submitted that in answer to question no. 12, he has categorically denied giving any loan to the assessee. Thus the documents found at the time of search in case of Shri DP Sehgal were nothing but a proposal for seeking loan and even the first letter was only a draft in which certain modifications/amendments were made. Thereafter a second letter was prepared. When both these letters contain the details of the same facts, then the handing over of the cheques by the assessee is not subsequent to the loan but it is prior to the proposed loan. Even there was no certainty about from whom the loan was actually taken as in the alleged acknowledgement letter it is stated that the loan was received from or through Shri DP Sehgal. The AO while passing the penalty order under section 271D was also not sure about the fact from whom the alleged loan was taken. Thus it was only a proposal made by the assessee to his close friend who was helping him out in arranging the finance. The documents which were found in the possession of Shri DP Sehgal were required to be submitted in advance for the proposed loan but finally when no loan was taken by the assessee, these documents itself do not prove the transaction of loan. These are all undated documents, not even indicating the transaction of loan. The department has presumed that the assessee has taken loan in the month of May – June 2014 based on the statement of Shri DP Sehgal as well as statement of the assessee recorded

under section 132(4) which was immediately retracted by the assessee. The presumption under section 132(4A) can be raised only against the person from whose control or possession the document was found and, therefore, it is he, who is answerable. Once Shri DP Sehgal has denied having given any loan to the assessee, then there cannot be second presumption against the assessee. In support of his contention, he has relied upon the decision of Hon'ble Jurisdictional High Court in case of CIT vs. SMS Investment Corporation Pvt. Ltd., 207 ITR 364 (Raj.). The Id. A/R then submitted that once the documents found during the search do not disclose the fact of obtaining loan from Shri DP Sehgal and further the assessee has taken a loan of Rs. 10 crores from AU Finance Ltd. on 30.07.2014, then there is no scope of any presumption for taking the alleged loan of Rs. 15 crores by the assessee. He has further contended that even when no corresponding asset was found to show the allegation of the said loan by the assessee, then the penalty levied on the basis of presumption is not sustainable. The Id. A/R has further submitted that the Id. CIT (A) has considered new material which is in violation of Rule 46A of IT Rules read with section 251(4) of the IT Act. He has pointed out that the Id. CIT (A) has considered the statement of the assessee recorded under section 132(4), however, the said statement was retracted by the assessee immediately without any delay and was not the basis of initiation as well as levy of penalty by the AO under section 271D of the IT Act. The Id. A/R has submitted that the penalty levied by the AO under section 271D and confirmed by the Id. CIT (A) is not sustainable and the same be deleted.

4. On the other hand, the Id. D/R has submitted that in the search and seizure under section 132 of the IT Act in case of Shri DP Sehgal, un-named and undated 15 blank cheques of Rs. 1 crore each signed by the assessee were found, inventorized and seized from the possession of Shri DP Sehgal. Along with the cheques, a letter signed by the assessee duly acknowledged receipt of loan of Rs. 15 crores along with another set of 15 blank demand promissory notes of Rs. 1 crore each signed by the assessee were also seized from the possession of Shri DP Sehgal. In the statement recorded under section 132(4) of the IT Act, Shri DP Sehgal has stated to have received them in the month of May-June, 2014 from the assessee as security. The Id. D/R has also referred to question no. 7 and answer thereto of the statement of Shri DP Sehgal and submitted that he has explained that these cheques, promissory notes and letter signed by the assessee were received in the month of May-June, 2014. Subsequently Shri DP Sehgal filed a settlement application before the Settlement Commission, New Delhi. The assessee in the statement recorded under section 132(4) dated 7th September, 2017 has admitted to have received the loan of Rs. 15 crores in cash from Shri DP Sehgal. However, the assessee subsequently retracted the statement by writing a letter dated 30th September, 2017 to the CBDT. The alleged retraction has no evidentiary value as it is sent to the CBDT and not to the Investigation Wing. Further, when the assessee in the statement on oath has admitted the fact of receiving the loan of Rs. 15 crores, then the subsequent retraction without explaining the cogent reason for any mistake in the statement is not acceptable. Even otherwise, the assessee has not alleged any coercion, undue pressure or threat at the time of statement recorded under section 132(4) of the Act. The said admission/confession on the part of the assessee is

based on the seized material which was confronted to the assessee at the time of statement recorded under section 132(4) of the Act. The Id. D/R has also referred to the report conducted by the department during the proceedings under section 245D of the Act as well as the order of the Settlement Commission wherein the so called retraction and denial of the assessee was rejected having any evidentiary value. The Id. D/R has also relied upon the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Ravi Mathur in DB IT Appeal No. 67 of 2002 dated 13th May, 2016. Thus in the proceedings before the Settlement Commission, it was established that the assessee borrowed cash loan of Rs. 15 crores from Shri DP Sehgal in lieu of which he has given the acknowledgement letter, blank cheques and demand promissory notes to Shri DP Sehgal which have been seized from the premises of Shri DP Sehgal. This fact was further corroborated by the assessee in his statement recorded under section 132(4) of the IT Act on 07.09.2017 and again on 23.10.2017. The subsequent retraction by the assessee is a make belief document which is nothing but after-thought to escape taxation.

4.1. As regards the limitation of penalty proceedings under section 271D of the Act, the order passed by the AO is within 6 months from the reference made to Additional CIT-1, Kota by the AO. Therefore, it is not barred by limitation. The Id. D/R has referred to the reference made by the ACIT Circle-1, Kota dated 09.08.2017 to Additional CIT-I Kota for levy of penalty under section 271D of the IT Act. The impugned order was passed on 11.10.2017, therefore, the same is within the period of limitation as per provisions of section 275(1)(c) of the IT Act. The Id. D/R has further contended that when the assessee filed a retraction petition after the search

operation, then the contents/facts narrated in the sworn in statement made on oath under section 132(4) or under section 131 of the Act cannot be brushed aside or ignored. If he is so aggrieved, then he has to come with fresh evidence so that his claim can be factually sustainable. Mere making allegation will not be accepted. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of Pullangode Rubber Products Co. Ltd. vs. State of Kerala, 91 ITR 18 (SC) and submitted that an admission is an extremely important piece of evidence. He has also relied upon the decision of Hon'ble Jurisdictional High Court in case of M/s. Bannalal Jat Constructions Pvt. Ltd. in DB IT Appeal No. 140/2018 and submitted that the Hon'ble High Court has held that the statement recorded under section 132(4) as well as under section 131 of the IT Act cannot be discarded summarily in cryptic manner and the retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. In view of documentary facts gathered and legal position as laid down in various decisions, it is clear that the assessee has committed the default of taking cash loan in violation of section 269SS and consequently liable for penalty under section 271D of the IT Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. Since the assessee has raised a legal issue regarding validity of the order passed under section 271D as barred by limitation, therefore, we first take up the issue of limitation. The Additional CIT has initiated the penalty proceedings under section 271D by issuing the show cause notice dated 1st September, 2017 as under :-

कार्यालय
अपर आयकर आयुक्त
रेन्ज -1, दैनिक नवज्योति भवन, रावतभाटा रोड, कोटा (राज.)
दूरभाष नं. 0744-2500207

दिनांक: 01.09.2017

क्रमांक: अ.आ.आ./रेन्ज-1/कोटा/2017-18/ 1032

To,
Sh. R. K. Verma,
A-33, Talwandi,
Kota
(PAN: ADDPK1093R)

Sub: Show cause notice for imposition of penalty u/s 271D of the Income Tax Act, 1961 for A.Y. 2015-16 – regarding.

The Asstt. Commissioner of Income Tax, Circle-1, Kota referred your case for imposition of penalty u/s 271D of the Act due to violation of provisions of section 269SS by you during the period relevant to A.Y. 2015-16.

And whereas it appears to me that you have taken or accepted following loans or deposits in cash in violation of provisions of section 269SS of the Act:-

S. No.	Name of the persons from whom loans/ deposits received	Month of Receipt	Amount
1.	Sh. D. P. Sehgal	May - June 2014	Rs. 15 crore

You are hereby required to appear before me at **11.30 A.M. on 21.09.2017** and show cause as to why penalty u/s 271D of the Act should not be imposed upon you for the said default. If you do not wish to avail yourself of this opportunity of being heard in person or through Authorized Representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271D of the Act.



(डॉ. रण सिंह)
अपर आयकर आयुक्त,
रेन्ज-1, कोटा

The said show cause notice was issued by the Additional CIT on the basis of the letter dated 09.08.2017 of the Assistant Commissioner of Income-tax, Circle-1, Kota being the reference for levy of penalty. For ready reference, we reproduce the reference letter of the Asstt. CIT for levy of penalty as under :-

भारत सरकार / Government of India
कार्यालय सहायक आयकर आयुक्त ,वृत्त-1, कोटा
Office of the Assistant Commissioner of Income Tax, Circle-1, Kota.
कमरा संख्या 106, प्रथम तल, दैनिक नवज्योति बिल्डिंग, रावतभाटा रोड, कोटा-324009
Room No. 106, 1st floor, Danik Navjyoti Building, Rawatbhata Road, Kota-324009.

क्रमांक सहा.आ.आ./वृत्त-1/कोटा/2015-16/633

दिनांक 09.08.2017.

To
The Addl. Commissioner of Income Tax,
Range-1, Kota.

Sir,

Sub : Information in the case of Shri R.K. Verma, Kota (PAN:ADDPK 1093 R)
– Reference for levy of penalty u/s 271D – Reg. –

Kindly refer to your good office letter No. 446 dated 06/06/2017 on the above mentioned subject.

It is submitted that this office has received an information from the DDIT(Inv.)-III Jaipur that during search & seizure action u/s 132(1) in the case of Adventage Group (Mr. D.P. Sehgal), Jaipur 15 blank cheques of Rs. 15 crores (one crore each) signed by Shri Ram Kishan Verma were found and seized alongwith 15 blank demand promotes of Rs. 15 crores (one crore each) duly signed by Shri R.K. Verma. During the course of search statement of Shri D P Sehgal was recorded and as per which cheques & promotes were received in May-June 2014 from Mr. R.K. Verma as a security to manage fund from personal source & market. It was also stated in the statement that he could not manage fund.

Shri R.K. Verma was issued summons u/s 131 on 01.04.2015 for recording the statement on 10.04.2015 by the Dy. Director of Income tax (Inv)-III, Jaipur and the same was duly served upon him, but he did not comply with the same in any way, a confirmatory letter of Shri R.K. Verma acknowledging receipt of loan of Rs. 15 crore from Shri D.P. Sehgal and his friends was also found & seized at the same of search operation.

The DDIT-III, Jaipur opined that the documents so found and seized as aforesaid are presumably true within the meaning of section 132(4A) of the I.T. Act, 1961 and based thereon and also the non-compliance on that part of Shri R.K. Verma to the summons issued to him, came to the conclusion that Shri D. P.

Sehgal and his friends have given unaccounted cash loan of Rs. 15 crore to Shri R. K. Verma carrying annual interest @ 24% per annum. As such, the DDIT (Inv.)-III, Jaipur has informed that Shri R.K. Verma had contravened provisions of section 269SS and appropriate action under the provision of I.T. Act, 1961 has to be initiated in the case of Shri R.K. Verma.

The letter bearing No. 946 dated 23.10.2015 of the DDIT (Inv.)-III, Jaipur alongwith its enclosure are being submitted for kind perusal and necessary action.

Yours faithfully,

Encl. As above.

Sd/-
(R.K. DOI)
Asst. Commissioner of Income Tax,
Circle-1, Kota."

This reference was made on the basis of the documents seized from the possession of Shri DP Sehgal during the course of search and seizure action under section 132(1) on 19.12.2014. The AO has also made a reference in the said letter of summons issued under section 131 on 01.04.2015 by the DDIT Investigation, Jaipur. The DDIT Jaipur vide letter dated 23.10.2015 informed the ACIT/AO about the contravention of provisions of section 269SS of the IT Act by the assessee and appropriate action under the provisions of the Act has to be initiated. Thus the initiation of penalty proceedings by issuing the show cause notice dated 01.09.2017 is based on the information received by the AO of the assessee from the DDIT Investigation Jaipur vide letter dated 23rd October, 2015. Section 275 provides the limitation for imposition of penalty under Chapter-XXI of the IT Act. Since in the case in hand, the penalty under section 271D is not imposed pursuant to any assessment

order, therefore, clause (c) of section 275(1) is relevant for the purpose of limitation for passing the order under section 271D of the IT Act. For ready reference, we reproduce the provisions of section 275(1) as under :-

"275. ³⁹[(1)] No order imposing a penalty under this Chapter shall be passed—

*⁴⁰[(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the ⁴¹***] Commissioner (Appeals) under section 246 ⁴²[or [section 246A](#)] or an appeal to the Appellate Tribunal under [section 253](#), after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed⁴³, or six months from the end of the month in which the order of the ⁴⁴***] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the ⁴⁵[Principal Chief Commissioner or] Chief Commissioner or ⁴⁵[Principal Commissioner or] Commissioner, whichever period expires later :*

*⁴⁶[**Provided** that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under [section 246](#) or [section 246A](#), and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the ⁴⁵[Principal Chief Commissioner or] Chief Commissioner or ⁴⁵[Principal Commissioner or] Commissioner, whichever is later;]*

- (b) in a case where the relevant assessment or other order is the subject-matter of revision under [section 263](#)⁴⁶[or [section 264](#)], after the expiry of six months from the end of the month in which such order of revision is passed;*
- (c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.]”*

Thus no order imposing a penalty shall be passed after expiry of financial year in which the proceedings in the course of which action for imposition of penalty has been initiated are completed or 6 months from the end of the month in which the action for imposition of penalty is initiated whichever period expires later. The plain

reading of this clause reveals that in case the proceedings in the course of which action for imposition of penalty has been initiated in the financial year, then the order for penalty shall not be passed after the expiry of the said financial year. However, there may be instances when such proceedings are completed at the fag end of the financial year to say in the month of March itself, then it is practically not possible to pass a penalty order before 31st March of the same financial year. Therefore, the second limb of this clause is relevant which gives 6 months from the end of the month in which action of imposition of penalty is initiated. In the case in hand, the action for imposition of the penalty was initiated vide letter dated 23rd October, 2015 whereby the DDIT Investigation-3, Jaipur sent information along with the document to the AO for his perusal and necessary action. These are the proceedings from which the AO has satisfied himself about the default on the part of the assessee of violation of the provisions of section 269SS of the Act by taking the alleged loan of Rs. 15 crores in cash. Though there was subsequent search and seizure action in the case of the assessee on 07.09.2017, however, those proceedings were subsequent to the satisfaction of the AO as well as initiation of the penalty proceedings by issuing show cause notice dated 01.09.2017. Therefore, for the purpose of limitation under section 275(1) what is relevant is the communication from the DDIT Investigation-3, Jaipur to the ACIT Circle-1, Kota vide letter dated 23rd October, 2015. Therefore, the limitation would reckon from the end of the month of October, 2015 and shall expire on the expiry of 6 months from the end of the month of October, 2015. In other words, the limitation for passing the penalty order under section 271D shall expire on 30th April, 2016. The Agra Bench of the

Tribunal in case of Sharda Educational Trust vs. ACIT (supra) has considered this issue of limitation for passing the order under section 271D in para 13(1) as under :-

"13. After having considered the rival submissions, facts and circumstances of the case, provisions of s. 275(1)(c) of the Act and aforesaid various decisions and the Circular No. 387 relied upon by the counsel for the assessee and the fact that the learned Departmental Representative has not brought any decision contrary to various decisions relied upon by the counsel for the assessee, to our notice at the time of hearing, we are of the opinion that the assessee is to succeed on all counts such as ;

(i) In the present case, it is an admitted fact that neither the assessee had furnished any return for the asst. yr. 1996-97, nor any assessment was made nor any proceedings under the IT Act relating to the assessee was pending before the IT authorities on 12th June, 2003, or later on, till the date of levy of penalty under s. 271D, i.e., on 12th June, 2003, when the proceedings were initiated or on 11th Dec., 2003, when the penalty order was passed and therefore, the penalty proceedings having not been initiated during the course of any proceedings, the same were illegal and bad in law.

It is also an admitted fact that the penalty proceedings in question were initiated after a lapse of a period of more than seven years. Consequently, we are unable to uphold the levy of penalty. Our conclusion is supported by the decision of Tribunal, Cochin Bench, in the case of Noble Pictures (supra), wherein it has been held that the penalty proceedings under s. 272A having been initiated after a period of more than 6 years were barred by limitation, and also by the

decision of Delhi High Court in the case of CIT vs. Rajinder Kumar Somani (supra), which had been followed by the Tribunal in the case of Noble Pictures (supra)."

In the case in hand, the AO has not satisfied himself during the assessment proceedings or any other proceedings under the IT Act but this satisfaction of the AO as revealed from the reference letter is based on the information and document received from the Investigation Wing, Jaipur. Therefore, even if the said correspondence is considered as part of the proceedings of investigation carried out by the Jaipur Investigation Wing in case of Shri DP Sehgal, the limitation will reckon when the said investigation proceedings were completed and thereafter the information was sent by the Investigation Wing to the AO of the assessee. The Hon'ble Jurisdictional High Court in case of CIT vs. M.A. Prestressed Works, 220 ITR 226 (Raj.) has considered the aspect of initiation of penalty proceedings as under :-

" We have considered the submissions made by learned counsel for the Revenue.

Section 274 of the Income-tax Act provides the procedure for imposing the penalty while section 275 sets out the time-limit within which the penalty proceedings must be completed. Section 275 requires to complete the penalty proceedings within two years from the end of the financial year in which the proceedings in the course of which the action for imposition of penalty has been initiated, are completed. But where the assessment order or any other order is the subject-matter of appeal before the Deputy Commissioner (Appeals) or the Commissioner of Income-tax (Appeals) or to the Income-tax Appellate Tribunal, the period for completing the penalty proceedings will be either a two year period from the end of the financial year in which the proceedings, in the course of which the action for imposition of the penalty was taken, are completed, or a period of six months from the end of the month in which the order of the appellate authority is received by the Commissioner, whichever period expires later. Section 275, which applies to the case of the assessee, reads as under:

"275. *Bar of limitation for imposing penalties.* — (1) No order imposing a penalty under this Chapter shall be passed—

(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or an appeal

to the Appellate Tribunal under sub-section (2) of section 253, after the expiration of the period of—

(i) two years from the end of the financial year in which the proceedings, in the course of which the action for imposition of penalty has been initiated, are completed, or

(ii) six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner,
whichever period expires later;

(b) in any other case, after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed."

Section 275 divides the cases into two categories : the first category of cases is where the assessment order or the order to which proceedings for imposition of penalty relate, was the subject-matter of appeal under section 246 or an appeal under section 253. The limitation for the cases falling under this category, is two years from the end of the financial year in which the proceedings, in the course of which the action for imposition of penalty has been initiated, were completed ; or six months from the end of the month in which the order of the appellate authority was received by the Commissioner, whichever period expires later. The second category covers all other cases not falling within category No. 1 and the limitation provided for these cases is within two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed. The words "in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed" used in section 275 indicate the proceedings in which the income-tax authority is satisfied about the default which attracts the penalty and not with respect to any other proceeding in which the order like the cancellation of the registration, etc., has been passed. It is the assessment order or any other order passed in the proceeding in the course of which it is found that the assessee has brought himself within the mischief of the penalty proceedings.

In the present case, the order, in which the proceedings for imposition of penalty were initiated, was passed on July 30, 1983, which was subjected to appeal and the appeal was dismissed on February 24, 1984."

The Hon'ble High Court has observed that the words " in which the proceedings in course of which the action for imposition of penalty has been initiated, are completed" used in section 275 indicate the proceedings in which the Income Tax Authorities satisfied about the default which attracts the penalty and not with respect to any other proceedings in which the order, like cancellation of registration has been passed. In the case in hand, the taxing authority has exhibited his satisfaction about the default of section 269SS in the investigation proceedings carried out by the Investigation Wing in case of Shri DP Sehgal and finally the said

satisfaction was communicated to the AO of the assessee vide letter dated 23rd October, 2015. Hence what is relevant is the said letter dated 23rd October, 2015 whereby it was communicated to the AO and based on the said information and material, the AO further made a reference to the Additional CIT for levy of penalty. Thus the limitation for passing the order for levy of penalty under section 271D would reckon from the end of the October, 2015 and shall expire on 30th April, 2016 being the period of 6 months from the end of the said month of October, 2015. The penalty order passed under section 271D in the case of assessee is dated 11.10.2017 which is barred by limitation and, therefore, the same is liable to be quashed. We make it clear that the subsequent search and seizure action under section 132 of the IT Act conducted in the case of assessee on 7th September, 2017 would not extend the period of limitation when the penalty proceedings were already initiated by issuing show cause notice dated 01.09.2017 which is based on the satisfaction vide letter dated 23rd October, 2015. It is not understandable as to why the AO has not initiated the proceedings under section 271D after receiving the said information and documents vide letter dated 23rd October, 2015 till he has made the reference on 09.08.2017. Accordingly, we hold that the impugned penalty order passed under section 271D dated 11.10.2017 is illegal being barred by limitation.

On the merits of levy of penalty :

6. On careful perusal of the penalty order passed under section 271D of the IT Act, we find that the said order is based on the documents found and seized from

the possession of Shri DP Sehgal during the search and seizure operation under section 132 of the IT Act carried on 19th December, 2014. The Additional CIT has made the reference of the acknowledgement letter signed by the assessee along with 15 undated blank cheques of Rs. 1 crore each as well as 15 blank promissory notes signed by the assessee. Though there is a subsequent search in the case of the assessee on 7th September, 2017 wherein statement of the assessee under section 132(4) of the Act was recorded to get the confirmation of the transaction of loan of Rs. 15 crores, however, the said admission/confession on the part of the assessee was retracted by the assessee vide letter dated 30th September, 2017. We will deal with the facts of retraction made by the assessee at later stage. First, we will analyze whether the documents found and seized during the course of search and seizure in the case of Shri DP Sehgal on 17th December, 2014 would establish the transaction of loan of Rs. 15 crores in cash. It is pertinent to note that during the course of search and seizure action in case of Shri DP Sehgal two letters signed by the assessee were found along with the 15 undated blank cheques and 15 promissory notes. For ready reference, both the undated letters are reproduced as under :-

Kishan Verma
M-Madras33-A, Infront of Commerce College
Talwandi, Kota (Raj.) - 324 005
T: 0744-2406263

Date: _____

Dear Mr. Sehgal
424-425
Ganpati Plaza
M.I. Road

24/7.

I hereby thankfully acknowledge receipt of loan of Rs. 15 Crore (Rupees Fifteen Crore only) from you / your friends (through you and your efforts) on your personal guarantee , carrying annual interest rate of 18% (compounded quarterly, in case of non-payment of interest of any quarterly installment of interest).

I have issued following Fifteen undated cheques of Central Bank of India DAV School Talwandi Kota for a total principal amount Rs. 15 Crore_ (Rupees Fifteen Crore only) towards repayment of the above mentioned principal loan amount :

FIFTEEN Cheques No. 003441 to 003455 (both inclusive) of Rs. 1 Crore (each)

I hereby authorise you to fill up the dates and the name of the payee in the above cheques and present them to the bank for encasing them whenever you feel need to receive back your loan. I again acknowledge that these cheques are issued for adequate value / consideration received. I will however, much appreciate if you will let me know before presenting the cheques for encasing. This is only a request and not a condition.

Carrying valuation of new loan amount.
I would make myself efforts to replace the blank cheques with the security of some immovable property within six months from today. However, in case, you find after 24 ¹⁵ months from now that you have not received back your loan along with interest, I undertake to give you(or your nominee) by way of cost-free transfer an appropriate number of equity shares held by me in my company (Resonance Eduventures Pvt.Ltd.) - worth the amount of above mentioned principal loan and unpaid interest thereon on demand by you. The fair market value (worth) of the shares shall be determined by one of the following methods (in order of preference):

1. In case shares have already been listed on some stock exchange- the latest quoted price / traded price of the shares (However, any price older than 15 days need not be acceptable to you. *minimum 5%.*)
2. In case shares have not been listed on the stock exchange, or quoted price being older than 15 days is not acceptable to you, the valuation at which the shares have last exchanged hands between :
(a) promoters and any outsider investor ; or *(provided it is not more than 1yr old transaction)*
(b) Existing PE investors and new Investors
shall be adopted, provided transaction is not more than one year old];
3. In case neither of the above condition is applicable, at the valuation arrived at by PE multiple of 20 to the Profit After Tax (PAT) of the company for the immediately preceding completed financial year, on the basis of audited accounts.

I also assure you that in case shares are not listed on the stock exchange, I will ensure that shares are duly transferred in your name and any objection from any body or any director or investor does not create any problem or hindrance and no legal infirmity is there in transfer. *further to this I undertake that this transaction*

Thanking you, *will not be linked with any other transaction*
Yours truly
of Previous or future dates.

(R.K.Verma)
33-A Talwandi

Kota (Raj.)

17

Ram Kishan Verma
B.Tech. IIT-Madras

33-A, Infront of Commerce College
Talwandi, Kota (Raj.) - 324 005
T: 0744-2406263

Ref.:

Date: _____

Dear Mr. Sehgal
424-425
Ganpati Plaza
M. I. Road, Jaipur

I hereby thankfully acknowledging receipt of loan of Rs. 15 Crore (Rupees Fifteen Crore only) from you / your friends (through you and your efforts) on your personal guarantee, carrying annual interest rate of 24% (compounded quarterly, in case of non-payment of interest of any quarterly installment of interest).

I have issued following fifteen undated cheques of Central Bank of India, DAV School, Talwandi, Kota for a total principal amount Rs. 15 Crore (Rupees Fifteen Crore only) towards repayment of the above mentioned principal loan amount:

Fifteen Cheques no. 003441 to 003455 (both inclusive) of Rs. 1 Crore each

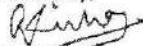
I hereby authorise you to fill up the dates and your or your nominees' name as payee in the above cheques and present them to the bank for encasing them whenever you feel need to receive back your loan. I again acknowledge that these cheques are issued for adequate value / consideration received. I will however, much appreciate if you will let me know before presenting the cheques for encasing. This is only a request and not a condition.

I would make my best efforts to replace the blank cheques with the security of immovable property carrying valuation of more than 1.5 times of loan amount within six months from today. However, in case, you find after 15 months from now that you have not received back your loan along with interest, I undertake to give you (or your nominee) by way of cost free transfer an appropriate number of equity shares held by me in my company (Resonance Eduventures Pvt. Ltd.) worth the amount of above mentioned principal loan and unpaid interest thereon on demand by you. The fair market value (worth) of the shares shall be determined by one of the following methods (in order of preference):

1. In case shares have already been listed on some stock exchange- the latest quoted price / traded price of the shares minus 5%. However, any price older than 15 days need not be acceptable to you.
2. In case shares have not been listed on the stock exchange, the valuation at which the shares have last exchanged hands between:
 - a. promoters and any outsider investor (provided it is not more than one year old transaction); or
 - b. Existing PE investors and new investors shall be adopted, provided transaction is not more than one year old;
3. In case neither of the above condition is applicable, at the valuation arrived at by PE multiple of 20 to the Profit After Tax (PAT) of the company for the immediately preceding completed financial year, on the basis of audited accounts.

I also assure you that in case shares are not listed on the stock exchange, I will ensure that shares are duly transferred in your name and any objection from any body or any director or investor does not create any problem or hinderance and no legal infirmity is there in transfer. Further to this I undertake that this transaction will not be linked with any other transaction of previous or future dates.

Thanking you,
Yours truly,


(R. K. Verma)
33-A, Talwandi
Kota (Rajasthan)


19/12/19

The peculiar feature of both the letters is that the contents of these letters are identical except some amendment/additions were suggested in the first letter regarding rate of interest, period for repayment of loan and then compounding interest in case of non-payment of installment shown. However, the details of the cheques in both the letters are same which are also matching with the cheques found during the course of search. Thus it is apparent that the first letter signed by the assessee mentioned the terms and conditions which were not acceptable to the other party and some changes were proposed in the said letter and accordingly the second letter was again prepared by incorporating the amendments as suggested on the first letter. Therefore it is clear that at the time of submitting the first letter, the transaction of loan was not completed even though the language of acknowledgement of receipt of loan is same in both the letters. This shows that the mere contents of the letter would not establish the fact of actual transaction of loan of Rs. 15 crores when the same contents and details of the cheques are given in the second letter which is treated as acknowledgement of receipt of loan by the department. It appears that this letter acknowledging the loan along with the collateral cheques and promissory notes were submitted by as a proposal for grant of loan. Even otherwise, the acknowledgement letter does not speak about the loan of Rs. 15 crores in cash. These facts along with the undisputed fact of availing loan of Rs. 10 crores by the assessee from AU Finance Ltd. on 30th July, 2014 substantiate the explanation of the assessee that after availing this loan from the AU Finance Ltd. the request for loan of Rs. 15 crores from or through Shri DP Sehgal was not pursued. We further note that this fact is even corroborated by Shri DP

Sehgal in his statement recorded under section 132(4) on 19th December, 2014.

The relevant part of answer to question no. 12 is as under :-

“q 12 आपके कार्यालय के भौतिक सत्यापन के दौरान पाये गये कुछ अन्य दस्तावेज जिन्हें Annexure-A के Exhibit-15 में संकलित किया गया है उन्हें मैं आपको दिखा रहा हूँ। कृपया इनका ध्यानपूर्वक अवलोकन कर इन दस्तावेजों में जो विवरण है उस पर स्पष्टिकरण दें।

उत्तर : मैंने Annexure-A के Exhibit-15 का ध्यानपूर्वक अवलोकन कर लिया है। इसके संबंध में मेरा यह निवेदन है कि आर.के.वर्मा मेरे घनिष्ठ मित्र है जिनसे मेरा 22 वर्षों से पारिवारिक संबंध है जहाँ तक मुझे याद है मई 2014— जून 2014 में उन्होंने मुझे अपने निजी स्त्रोत एवं बाजार से उनके School Project के लिये पूंजी जुटाने हेतु कहा था। जिसकी Security के बतौर उन्होंने मुझे रुपये 1,00,00,000/- प्रत्येक के सेन्टल बैंक ऑफ इन्डिया , ब्रांच तलवंडी, कोटा के उनके खाता संख्या 00000003088007990 के undated & unnamed 15 चैक दिये थे। इसके अलावा मुझे 15 undated प्रोमेसरी नोट्स भी भेजे थे। इस बात से संबंधित मेरा उनसे communication भी हुआ था जिसके अंतर्गत मैंने उनसे एक पत्र वाहक द्वारा लाये गये undated पत्र में कुछ सुधार करके दुबारा भेजने के लिये भी वापस दिया था। यह दोनों पत्र उसके मूल स्वरूप में Annexure-A के Exhibit-15 के पृष्ठ कम 9 एवं 10 पर रखे हैं।

मैं यहाँ यह भी स्पष्ट कर देना चाहता हूँ कि क्योंकि मैं इतने रूप्यों का प्रबंध नहीं कर पाया था। इसलिये मैंने जहाँ तक मुझे याद है लगभग अगस्त 2014 में श्री आर.के. वर्मा को अपनी विवशता जाहिर कर दी थी तथा अवगत करवा दिया था कि पैसों की व्यवस्था नहीं हो पाई। इससे संबंधित मैंने उनको एक पत्र भी लिखा था जो कि कार्यालय में कहीं पर रखा होगा जो कि भौतिक सत्यापन के दौरान शायद ध्यान में नहीं आया। इस पत्र की कार्यालय प्रति मैं विभाग के समक्ष प्रस्तुत कर दूंगा। मैं यह भी प्रयास करूंगा कि उपरोक्त पत्र की मूल प्रति भी श्री आर. के. वर्मा से प्राप्त करके विभाग के समक्ष प्रस्तुत कर दूंगा।....”

Thus Shri DP Sehgal has explained how two letters were found at the time of search that there were some corrections/amendments in the first letter and, therefore, the

second letter was taken from the assessee. He has also specifically stated that in the month of August, 2014 he has expressed his inability to arrange the loan and, therefore, no loan was granted by him to the assessee. Thus the out-come of the investigation proceedings in case of Shri DP Sehgal has not established conclusively that a loan of Rs. 15 crores was received by the assessee from Shri DP Sehgal, much less the loan in cash. It appears that the department though tried to examine the assessee during the post search enquiry in case of Shri DP Sehgal by issuing summon under section 131 to the assessee on 01.04.2015 and thereafter the notice under section 133(6) was also issued to the assessee on 13th October, 2016. The assessee replied the summons of the department vide letter dated 07.09.2016. Thus it is clear that when the department could not succeed in the case of Shri DP Sehgal, they conducted a search and seizure action in case of the assessee on 7th September, 2017 to strengthen their case against Shri DP Sehgal. The contemporaneous events of making the request of loan in the month of May-June 2014 to Shri DP Sehgal and thereafter the approval of loan was granted by AU Finance Ltd. on 30th July, 2014 and subsequent dropping of the proposal of loan from Shri DP Sehgal as he has stated in the statement that in the month of August he regretted the request of the assessee for not arranging the funds clearly established the chain of events which cannot be doubted when there is no other evidence of actual transaction of loan except the papers given by the assessee as a security and pre-requisition for grant of the alleged loan from Shri DP Sehgal. Hence all these sequence of transactions and events make it clear that the revenue has failed to establish the fact without any dispute and doubt that an actual movement of cash of Rs. 15 crores happened between the assessee and Shri DP Sehgal. The

proceedings under section 271D are initiated and penalty is levied generally when the transaction of violation of provisions of section 269SS is not in dispute but the only question regarding the levy of penalty is whether the assessee has been able to explain a reasonable cause for the violation. In the case in hand, the transaction of alleged loan itself is in dispute and the revenue has taken only a view based on certain documents but still it is not an undisputed or establishment of fact beyond doubt that the said transaction has actually taken place.

Since the revenue has relied upon the statement of the assessee recorded under section 132(4), therefore, the evidentiary value of the said statement as well as subsequent retraction of the assessee is also relevant for arriving at the conclusion whether there is an actual transaction of loan of Rs. 15 crores in cash received by the assessee from Shri DP Sehgal. The Id. D/R has referred to various cases in support of his contention to say that the retraction made by the assessee has no evidentiary value. However, we find that the retraction of the assessee vide letter dated 30th September, 2017 is not a stand taken by the assessee first time after the admission/confession made by the assessee in the statement recorded under section 132(4) on 7th September, 2017. It is pertinent to note that the assessee in response to the notice issued by the Investigation Wing and even in the proceedings before the Settlement Commission has taken the same stand. The assessee has referred to the reply dated 07.09.2016 which is also referred in the reply filed by the assessee to the show cause notice as reproduced in the penalty order at pages 3 & 4 as under :-

" In response to the notice, Sh. K.C. Jain, CA, Authorized Representative (AR) of the assessee along with Sh. Harish Jain, Sr. Manager Finance & Accounts attended and filed reply signed by Shri R.K. Verma vide letter dated 21.09.2017 which is reproduced below.

" Please refer to above.

At the outset I hereby unconditionally deny having ever received any loan or deposit from Shri DP Sehgal in contravention of section 269SS of the Income Tax Act, 1961.

I may also bring to your kind notice that an enquiry in the matter was also done by Deputy Commissioner of Income Tax (Central Circle)-III, Jaipur in the matter of the assessment proceedings of Shri DP Sehgal for AY 2015-16. In the said enquiry I was asked to explain the matter. I hereby enclose a copy of the said reply for ready reference. I hereby reaffirm the contents of the said reply fully and without any reservations.

Any other version of facts or evidence contrary to my aforesaid reply dated 07.09.2016, irrespective of source or point of time of such version is denied, same being untrue. If you propose to rely on any such version/evidence, I hereby request your goodself to provide me a copy thereof and an opportunity to explain/rebut the same."

In this reply, Shri R.K. verma has reaffirmed the contents of his reply in the matter submitted by him before DCIT (Central Circle)-III, Jaipur which is reproduce below :-

" Please refer to above.

At the outset, I would like to humbly submit that any conclusion proposed to be derived by you on the basis of any papers/documents seized from the premises of Mr. D.P. Sehgal (or his concerns) that I had obtained any loan from Mr. D.P. Sehgal or his associates/friends is factually incorrect and logically not sustainable. I had not received any loan from Mr. D.P. Sehgal or his associates/friends on the basis of any such/seized documents because Mr. D.P. Sehgal was not able to arrange funds from is associates/friends on the terms and conditions mentioned in the said undated letter.

In view of the above factual position, answer to item No. A-F of paragraph 3 of your letter dated 13.10.2016 may be treated as NULL/Not Applicable.

At this stage itself, I would, however, like to point out that the very fact that two letters were found and seized in respect of the same matter, both signed by me and both acknowledging receipt of money unconditionally BUT containing materially and significantly different critical terms go to indicate that the acknowledgement of receipt of money therein was a sort of 'advance receipt' in the hope that Mr. Sehgal would be able to arrange such funds and execute the transaction without referring to me for the purpose of obtaining formal receipt and thereby delaying the transaction. Unfortunately, the transaction did not take place at all and all these undated unnamed documents were forgotten and continued to remain with him unutilized.

I hope the above information/explanation answers your queries in the above connection."

Thus by considering the earlier stand of the assessee prior to the statement recorded under section 132(4) as well as the subsequent retraction made by the assessee vide letter dated 30th September, 2017, we note that this is not an abrupt after-thought retraction by the assessee from the statement made under section 132(4) but as far as the alleged loan of Rs. 15 crores is concerned, the stand of the assessee right from the beginning was clear that he has not taken any loan from Shri DP Sehgal. This explanation of the assessee is not a mere vague general explanation but it is based on the relevant facts as well as evidence. Even the Hon'ble Supreme Court in case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala & Others, 91 ITR 18 (SC) relied upon by the Id. D/R has observed that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. Therefore, if the assessee has made out a case and shows that the statement made under section 132(4) is not based on correct facts, then the subsequent retraction is not prohibited. The Hon'ble Jurisdictional High Court in

case of CIT vs. Ravi Mathur (supra) as relied upon by the Id. D/R has also considered this issue and only after noticing the fact that there is an inordinate delay in retracting the statement earlier made on oath, the said retraction has no evidentiary value. Further, in the said case the assessee could not demonstrate that the statement initially recorded were factually incorrect. Similar position was expressed in the other decisions relied upon by the Id. D/R. Therefore, the retraction is not out-rightly prohibited but if the assessee subsequently points out with supporting material to show that the statement of admission is not factually correct, then such retraction cannot be ignored or brushed aside. The Hon'ble Gujarat High Court in case of Kailashben Manharlal Chokshi vs. CIT (supra) has discussed this aspect in para 22 to 26 as under :-

"22. We have heard learned counsels appearing for the respective parties at great length and considered the submissions. We have also gone through the orders passed by the authorities below. It is true that in normal circumstances this Court would not interfere in the finding of fact arrived at by the authorities. It is, however, to be seen as to whether the explanation tendered by the assessee would be considered by the authorities below. It is also to be seen as to whether an addition made is merely based on the statement recorded by the Assessing Officer under section 132(4) of the Act and whether any cognizance may be taken of the retracted statement. So far as case on hand is concerned, the glaring fact required to be noted is that the statement of the assessee was recorded under section 132(4) of the Act at mid night. In normal circumstances, it is too much to give any credit to the statement recorded at such odd hours. The person may not be in a position to make any correct or conscious disclosure in a statement if such statement is recorded at such odd hours. Moreover, this statement was retracted after two months.

23. The main grievance of the Assessing Officer was that the statement was not retracted immediately and it was done after two months. It was an afterthought and made under legal advise. However, if such retraction is to be viewed in light of the evidence furnished along with the affidavit, it would immediately be clear that the assessee has given proper explanation for all the items under which disclosure was sought to be obtained from the assessee. So far as amount invested in house property is concerned, the assessee has specifically stated in his explanation dated 28-2-1989 that there was absolutely

no basis for making the disclosure on account of bungalow at 68, Sarjan Society, Athwa Lines, Surat. It was in the year 1964 that the assessee took one Plot No. 68 in Sarjan Co-operative Housing Society which was also constructing the bungalow for which the assessee claimed to have been made contribution from time to time. The assessee took possession of the bungalow in 1974 when only ground floor was constructed. Since then he has been living there. The assessee has constructed first floor during 1986 to 1988 and he has incurred the expenses for first floor structure to the tune of Rs. 2,03,185.65 but this amount has been withdrawn from the account of the firm in which the assessee is a partner. As per say of Mr. Shah even departmental valuation officer has also accepted that the cost of construction of first floor worked out to Rs. 2,06,060. There was, therefore, no reason for making addition of Rs. 4 lakhs on the basis of alleged disclosure made by the assessee in his statement recorded under section 132(4) of the Act. In support of this statement the Revenue has not brought any evidence whatsoever which would establish that the assessee had in fact incurred an amount of Rs. 4 lakhs on the construction of the first floor and that amount was invested out of the undisclosed income. Hence there is no justification for making account of Rs. 4 lakhs merely on the basis of statement recorded under section 132 (4). None of the authorities have considered this explanation and the CIT(A) as well as Tribunal both have proceeded on the footing that the Assessing Officer has considered the explanation.

24. So far as the addition on account of gold ornament to the tune of Rs. 1 lakh is concerned, the assessee has given the explanation that was reproduced by the Assessing Officer in his assessment order which says that during the course of search and seizure proceeding, statement of assessee's wife, Smt. Kailashben Chokshi was recorded and according to which she had received about 25 tolas of gold each from her parents and from her parents-in-law side at the time of her marriage in the year 1960. She had given 15 tolas of gold ornaments to her daughter Ritaben at the time of her marriage in the month of March, 1988. If the total jewellery found during the course of search is taken into consideration, in light of the instructions issued by the Board, any middle class Indian family may be having jewellery and gold ornaments to that extent. Hence, no addition can be made on that count. Even if the board Circular may not have retrospective operation, looking to the quantum of holding and assessee's explanation, we are of the view that this is a normal holding which can be found in any middle class Indian family and hence no addition could have been justified on that count.

25. So far as addition of Rs. 1 lakh on account of unaccounted investment in furniture is concerned, it is stated by the assessee that on the ground floor furniture was made before 15 years and assessee had spent Rs. 25,000 for renovation after making withdrawal from the firm's account. It is further submitted that the furniture on the first floor was partly received and paid out of withdrawals from the firm. At the time of the search additional furniture meant for the first floor was just received by way of parcel from Ahmedabad and was lying in bundles. A detailed source of investment of furniture purchased from Ahmedabad with a due confirmation from the party concerned have been filed by the assessee before the Assessing Officer. Since no

payment of this additional furniture was made by the assessee till the date of search, no addition could have been made on this count.

26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.”

In the case in hand, when the documents seized during the course of search in case of Shri DP Sehgal do not establish conclusively the fact of alleged loan of Rs. 15 crores, then the said material can be a relevant evidence but in the absence of any other corroborative material to show the actual transaction and movement of money, it is not established that the transaction of loan of Rs. 15 crores in cash has actually taken place between the assessee and Shri DP Sehgal. We have already discussed the contents of the acknowledgment and arrived at the conclusion that these documents itself do not establish the transaction of loan but these are only submitted in advance for proposal of loan which was not materialized and this fact is also corroborated by the subsequent sanction of loan by AU Finance Ltd. Accordingly, in the facts and circumstances of the case as discussed above, we hold that the revenue has failed to establish conclusively and beyond doubt that the actual transaction of Rs. 15 crores has taken place between the assessee and Shri

DP Sehgal, hence the penalty levied under section 271D is not sustainable and the same is liable to be deleted. Accordingly, we delete the penalty.

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 03/07/2019.

Sd/-
(रमेश सी. शर्मा)
(RAMESH C. SHARMA)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 03/07/2019.

Das/

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

1. The Appellant- Shri Ram Kishan Verma, Kota.
2. The Respondent – The Addl. CIT, Range-1, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 405/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar