

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL,
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.3294/Mds/2016, 1761/Mds/2017 & 1762/Mds/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

The Deputy Commissioner of Income Tax, Corporate Circle 1(1), Chennai – 34.	Vs	M/s. Dr.Ganesan's Hitech Diagnostics Centre P Ltd., No.1, Millers Road, Kilpauk, Chennai – 600 010.
		PAN: AADCD7458H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Smt. S. Vijayaprabha, JCIT
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. S. Deepa, CA
सुनवाई की तारीख/Date of hearing	:	20.09.2017
घोषणा की तारीख /Date of Pronouncement	:	30.11.2017

आदेश / ORDER

PER A. MOHAN ALANKAMONY, AM:

These three appeals by the Revenue are directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Chennai dated 30.09.2016 in ITA No.402/CIT(A)-1/2015-16 for the assessment year 2012-13 passed U/s.250(6) r.w.s. 271D & 271E of the Act.

2.1 The Revenue has filed an appeal on 05.12.2016 within the period of limitation against the order of the Ld.CIT(A) dated

30.09.2016 mentioned supra, wherein the Ld.CIT(A) had confirmed the order passed by the Ld.ACIT levying penalty U/s.271D and U/s.271E of the Act for Rs.10 lakhs and Rs.3,15,000/- respectively. Thereafter when the appeal came up for hearing before the Tribunal on 10.07.2017, the Bench directed the Revenue to file two separate appeals with respect to levy of penalty U/s. 271D & 271E of the Act and further directed the Registry to issue defect memo. Complying with the directions of the Bench, the Revenue filed appeal in ITA Nos. 1761 & 1762 on 17.07.2017 with a delay of 224 days. The Revenue also filed a petition dated 17.07.2017 seeking condonation for the delay in filing the appeals which was only to cure the defect pointed out by the Tribunal in the appeal filed earlier within the period of limitation. After examining the above mentioned facts, the Bench decided to condone the delay because it is only a technical breach which was cured by the Revenue when pointed out on the earlier occasion and thereafter we hereby proceed to hear the appeals on merit.

2.2 Since we have admitted the appeal in 1761 of 2017 & 1762 of 2017 condoning the delay, appeal in ITA No.3294 of 2016 has become infructuous and accordingly it is dismissed.

3. (i) **ITA No. 1761 of 2017 for the assessment year 2012-13:**

The Revenue has raised three elaborate grounds in its appeal, however the crux of the issue is that “the Ld.CIT(A) has erred in deleting the penalty levied U/s.271D of the Act for Rs.10,00,000/- which is in contravention to Section 269SS of the Act because the assessee company had accepted loan by way of cash from its Director Dr. S.P. Ganesan.”

3. (ii) **ITA No. 1762 of 2017 for the assessment year 2012-13:**

The Revenue has raised three elaborate grounds in its appeal, however the crux of the issue is that “the Ld.CIT(A) has erred in deleting the penalty levied U/s.271E of the Act for Rs.3,15,000/ which is in contravention to Section 269T of the Act because the assessee company had repaid loan by way of cash to its Director Dr. S.P. Ganesan.”

4.1 The brief facts of the case are that the assessee is a private limited company engaged in the business of providing quality laboratory services like basic biochemistry, hematology, clinic pathology etc., filed its return of income for the assessment

year 2012-13 electronically on 30.09.2012 admitting total income of Rs.18,84,10,000/-. Subsequently the case was selected for scrutiny under CASS and final assessment order was passed U/s.143(3) of the Act on 06.01.2015. During the course of scrutiny assessment, it was observed from the tax audit report that the assessee company had repaid certain loan amount received from its Director Dr.S.P.Ganesan by way of cash which is in violation of Section 269T of the Act. Thereafter on examining the details of the loan transactions, following facts was revealed:-

- 1) The assessee company had obtained loan of Rs.10,00,000/- from its director Dr. S.P. Ganesan by way of cash on 12.03.2012.
- 2) The assessee company had also repaid loan received from Dr.S.P. Ganesan to the extent of Rs. 3,15,000/- by way of cash payment of Rs.20,000/- and exceeding Rs.20,000/- during the period 01.01.2012 to 31.03.2012.

4.2 On query, the Ld.AR explained before the Ld.ACIT that those transactions were only current account transactions and not loan or deposit as stipulated U/s.269SS / 269T of the Act, in order to attract penalty. The Ld.AR also placed reliance in the case Idhayam Publications Ltd reported in 285 ITR 221 and pleaded for

dropping the penalty proceedings initiated against the assessee. However, the Ld.ACIT rejected the submissions made by the Ld.AR by stating that the explanation of the Ld.AR was only an afterthought and the correct fact is that those transactions were cash loans received and repaid which is in contravention of the provisions of Section 269SS & 269T of the Act. However the Ld.ACIT relying on the decision of the case Grihalakshmi Vision v. Addl. CIT reported in 63 taxman.com 196 (Kerala) wherein it was held that, when there is no material to infer the receipts and payments from the partners of the firm/sister concerns were anything other than loans or deposits then penalty shall be attracted U/s.269SS & 269T of the Act. The Ld.ACIT further observed that in the case of the assessee there was no agreement between the Director and the assessee company to establish the fact that the transactions were not loan as that of the case Grihalakshmi Vision supra. The Ld.ACIT also came to the conclusion that the assessee company had failed to prove that there was any urgency, compulsion or any other important circumstances to accept and to repay the loan by way of cash when there were enough banking channels available within the close proximity of the assessee company. The Ld.ACIT further observed that the nature of business of the assessee also did not

warrant cash transaction and there was no compelling financial difficulty for receiving/repaying by way of cash. Reliance was placed in the decision rendered in the case Charan Dass Ashok Kumar vs. CIT reported in 52 taxman.com 424 (Punjab & Haryana), the decision in the case Nandhi Dhall Mills vs. CIT reported in 61 taxman.com 97 (Madras) and the decision of the case Ajay Goel vs. ACIT reported in 126 ITD 89 (Delhi). Further the Ld.ACIT placed reliance in the decision of the case Samora Hotels Pvt. Ltd. reported in 19 taxman.com 285 (Delhi) wherein it was held that, the words in the Act, "any other person" does not exclude directors or members of company which had received / accepted loans or deposits. Finally the Ld.ACIT came to the conclusion that the assessee company had accepted cash loan of Rs.10,00,000/- from Dr.S.P.Ganesan and repaid certain amount of loan by way of cash during the relevant assessment year contravening the provisions of 269SS & 269T of the Act respectively. Accordingly the Ld.ACIT levied penalty invoking the provisions of Section 271D & 271E of the Act.

5. On appeal, the Ld.CIT(A) deleted the penalty levied by the Ld.ACIT invoking provisions of Section 271D & 271E of the Act by observing as follows:-

“9. The provisions of s.269S5 prohibits acceptance from any person being a depositor any loan or deposit other than by a account payee cheque of a sum more than Rs.20,000 subject to proviso excluding deposit or acceptance by persons having agricultural income. Similarly 269 T prohibits repayment of loans or deposits subject to certain specified institutions and conditions therein. It is plain therefore that to attract the provisions of s.269SS or 269T the impugned transactions must satisfy the prime condition of either being a loan or deposit irrespective of the categorization made, the transactions in the case of the appellant in respect of Dr.Ganesan is on a current account, Dr.Ganesan being a shareholder as much as the managing director of the appellant company. Therefore, routine transaction in current a/c does not tantamount to being a loan or a deposit within the meaning of s.269SS / 269T. It is not uncommon where in the capacity of being the managing director keeping in view the exigency certain monies could have been received or returned by the appellant. To that extent the ratio in the relied upon case in 285 ITR 221 would apply. Further, in view of the import of the legislation no penalty would be leviable as the explanation tendered neither false etc in terms of ratio in ADIT v. A B Shanthi 255 ITR 258 (SC). Finally penalty u/s 271E, also mandates application of mind and reading in conjunction with the provisions of 8.273B with regard to the existence of 'reasonable cause' attendant to the transaction. As regards the applicability of the ratio relied upon by the AO in Grihalakshmi Vision v. Addl.CIT[2015] 63 taxrann.com 196E (Kerala) it is seen that in that case the amounts were received from partners and other sister concerns of the assessee and were repaid, and there was no material whatsoever to infer that these receipts were anything other than loans or deposits which is not the case here. Therefore, the facts are distinguishable. Keeping the sum totality of facts in perspective, I am of the considered view that the levy of penalty u/s 271D and 271 E cannot be sustained on the facts obtaining in the case where primarily the transactions not being loan or deposits are through current a/c and between the appellant and its managing director. The AO is directed to delete the penalty levied u/s 271E & 271E.”

6. Before us the Ld.DR argued in support of the order of the Ld.ACIT by reiterating the discussions stated therein while as the Ld.AR relied on the order of the Ld.CIT(A) and prayed for confirming his order.

7. We have heard the rival submissions and carefully perused the materials on record. On examining the case, we find that the following facts are not in dispute:-

- (i) The assessee company is closely held by Dr.S.P.Ganesan.
- (ii) Dr.S.P.Ganesan is the director in the assessee company steering the assessee company to bring in revenue.
- (iii) In fact Dr.S.P.Ganesan deploying his funds is engaged in the business of providing quality laboratory services like basic biochemistry, hematology, clinic pathology etc., keeping the assessee company as the platform.
- (iv) Therefore the assessee company is the extended arm of Dr.S.P.Ganesan.
- (v) Under the Companies (acceptance of deposits) Rules, 1975 and the Rule 2(b)(ix), deposits does not include any amount received from the Director or shareholder of a private limited company.

In such identical circumstances the Hon'ble Jurisdictional High Court in the case CIT vs. Udhayam Publications Ltd reported in 285 ITR 221 had categorically held that the transactions between the assessee and the director-cum-shareholder is not a loan or deposit when no interest is charged on such loan and it only partakes the character of current account. Further the Ld.CIT(A) had also vouched that the transaction between the assessee company and its director Dr.S.P.Ganesan does not tantamount to being a loan or deposit within the meaning of 269SS / 269T of the Act, following the decision of the Hon'ble Jurisdictional High Court supra. The Ld.CIT(A) had also observed in his order that it is not uncommon for the managing director of a company to extend fund to the company keeping in view of business exigency as in the case of the assessee company. Further the Ld.CIT(A) has distinguished the cases relied by the Ld.ACIT in his order and found it to be not applicable in the case of the assessee company. Moreover it is pertinent to mention that the provisions of Section 269SS & 269T of the Act were introduced in order to discourage unaccounted income brought into the books of accounts in the form of loans and deposits by producing confirmation letters from various unrelated parties. It was further aimed to avert proliferation of black money which is a serious threat to the

national economy. However In the case of the assessee company, it is nothing but application of the director's resources in his business which is run on the platform viz., "the assessee company" which is closely held by him. There is also no allegation by the Revenue that Dr.S.P.Ganesan has brought in his unaccounted money into the company, which is easily verifiable from the returns filed by Dr.S.P.Ganesan before the Revenue Authorities. Considering all these facts the Ld CIT(A) further relying in the decision of the Hon'ble Apex Court in the case M/S.Chamundi Granites Pvt. Ltd. vs. DCIT & others reported in 258 ITR 259 held that in the case of the assessee provisions of Section 269SS & 269T of the Act will not be applicable and thereby penalty cannot be levied invoking the provisions of Section 271D & 271E of the Act. The gist of the decision of the Hon'ble Apex court is extracted herein below for reference:-

“The object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the tax-payer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records to suit the plea of the taxpayer. The main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same.

The undue hardship of the provisions of section 271D, which replaced section 276DD providing for a penalty, is substantially mitigated by the inclusion of section 273B providing that if there was a genuine and bonafide transaction and taxpayer could not get a loan or deposit by account-payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power not to levy the penalty.”

Considering the facts of the case and the decisions relied by the Ld.CIT(A), we are of the view that he had arrived at an appropriate decision on this issue by deleting the penalty. Therefore we do not find it necessary to interfere in his order. Hence, the order of the Ld.CIT(A) is hereby confirmed. Accordingly the ground raised in both the Revenue's appeals are decided against the Revenue

8. In the result, the appeals of the Revenue in ITA No.1761 & 1762 of 2017 are dismissed and in ITA No.3294 of 2016 is dismissed as infructuous.

Order pronounced on 30th November, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 30th November, 2017

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |

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