

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

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.1665/CHNY/2018.

निर्धारण वर्ष /Assessment year : 2011-2012.

M/s. Space N Place Promoters P. Ltd,
No.18, V V Koil Street,
Periamet,
Chennai 600 003.

Vs. The Joint Commissioner of
Income Tax,
Corporate Range 6
Chennai

[PAN AAKCS 0817N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Srinivasa Rao, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 19-03-2019
घोषणा की तारीख /Date of Pronouncement : 21-03-2019

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, which is directed against an order dated 30.01.2018 of Id. Commissioner of Income Tax (Appeals)-15, Chennai, it is aggrieved on levy of penalty u/s.271D of the Income Tax Act, 1961 (in short "the Act") for violation of the mandate u/s.269SS of the Act.

2. Assessee engaged in the business of real estate was served with a notice u/s.271D of the Act by the Id. Assessing Officer citing violation of Section 269SS of the Act. As per the Id. Assessing Officer, assessee had received cash loans / advances from the following persons.

Sl.No	Name of the person (Smt/Shri.)	Amount ₹
1	M.R. Jayalakshmi	12,50,000
2	S. Manohar	3,50,000
3	M. Anandan	5,00,000
4	K. Padma	12,66,000
5	A.P. Ashok Kumar	43,30,000
6	C. Bama	9,90,000
7	D. Chinnakannu	23,40,000
		1,10,26,000

Ld. Assessing Officer was of the opinion that the assessee, but for seeking adjournments, did not give any worthwhile reply as to why it had accepted loans/ advances in cash. Ld. Assessing Officer thereupon took a view that assessee had violated Section 269SS of the

Act for a sum of ₹1,10,26,000/-. Penalty of like amount was levied u/s.271D of the Act.

3. Assessee's appeal before Id. Commissioner of Income Tax (Appeals) did not meet with any success. Though the Id. Commissioner of Income Tax (Appeals) sought a remand report from the Id. Assessing Officer with regard to the submission made by the assessee before him, as per the Id. CIT(A), Id. Assessing Officer in such remand report stated that assessee despite various notices given to it, did not furnish any explanation for the violation of Section 269SS of the Act. Assessee did state before Id. Commissioner of Income Tax (Appeals) that a sum of ₹76,60,000/- out of ₹1,10,26,000/- was received from its promoters A.P. Ashok Kumar, C. Bama and D. Chinnakannu and the balance sum of ₹33,66,000/- was received from four parties as advance towards sale of land. However, Id. Commissioner of Income Tax (Appeals) was of the opinion that assessee could not justify the explanation given by it. He thus confirmed the levy of penalty.

4. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessment for the impugned assessment year was completed by the Id. Assessing Officer on 25.03.2014 after a scrutiny. As per the Id.

Authorised Representative, advances received by the assessee were found to be genuine in such assessment and no additions were made. Contention of the Id. Authorised Representative was that receipt of money from the first four parties mentioned at para 2 above were advances against sale of land. According to him, sale of flats to atleast two of the above had happened in the succeeding year. Further, as per the Id. Authorised Representative, all these persons had filed confirmation letters before Id. Assessing Officer alongwith ledger copy of the assessee in their books, pursuant to summons issued to them. Contention of the Id. Authorised Representative was that these confirmations clearly demonstrated the nature of sums given by them were advances against purchase of flats. In so far as money received from promoters were concerned, Id. Authorised Representative submitted that they had given such amounts for meeting the day-today expenditure of the assessee and these were nothing but temporary advances. As per the Id. Authorised Representative, these advances were received in the current accounts of concerned persons, in the books of the assessee. According to him, these were neither loans or deposits. Relying on Section 269SS of the Act, as it stood prior to its substitution by Finance Act, 2015, Id. AR submitted that specified sum was brought within the ambit of the said Section only from 01.06.2015. As per the Id.

Authorised Representative, Explanation (iv) to Section 269SS of the Act, which defined specified sum, came into effect only from 01.06.2015 and this clearly demonstrated that advances or other sum received in relation to transfer of an immovable property was not on par with loans or deposits as it stood prior to substitution of Section 269SS of the Act. According to him, assessee had given a detailed reply on 17.12.2014 to the Id. Assessing Officer but this was ignored for no reason. Reliance was also placed on the judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Idyayam Publications Ltd, (2006) 285 ITR 221*. Thus, according to him, levy of penalty was done merely on presumptions and ought to be deleted.

5. Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that even if money received by the assessee were from its customers as advances, still it stood covered u/s.269SS of the Act. As per the Id. Departmental Representative, nature of the payments made by the customers to the assessee were nothing but pure loans and not advances. According to him, it might be true that out of four persons who had loaned money to the assessee, two had acquired flats from it. However, as per the Id. Departmental Representative, this also clearly demonstrated that the other two persons had no intention of buying any property from the assessee and what they had given was

only loans. In so far as money received from promoters were concerned, contention of the Id. Departmental Representative was that necessity of accepting such money in cash was never demonstrated by the assessee. According to him, assessee never furnished any details or reply to the notices issued to the assessee, even during the remand proceedings. Thus, as per the Id. Departmental Representative, lower authorities were justified in levying penalty u/s.271D of the Act.

6. We have considered the rival contentions and perused the orders of the authorities below. There are two types of cash receipts, which have been subject of levy of penalty u/s.271D of the Act. First is what have been claimed by the assessee as advances received from four customers. Details of these are reproduced hereunder:-

<i>Sl.No</i>	<i>Name of the person (Smt/Shri.)</i>	<i>Amount ₹</i>
<i>1</i>	<i>M.R. Jayalakshmi</i>	<i>12,50,000</i>
<i>2</i>	<i>S. Manohar</i>	<i>3,50,000</i>
<i>3</i>	<i>M. Anandan</i>	<i>5,00,000</i>
<i>4</i>	<i>K. Padma</i>	<i>12,66,000</i>

Second is what has been claimed by the assessee as received from its promoters. Details of these are given hereunder:-

<i>Sl.No</i>	<i>Name of the person (Smt/Shri.)</i>	<i>Amount ₹</i>
<i>1</i>	<i>A.P. Ashok Kumar</i>	<i>43,30,000</i>
<i>2</i>	<i>C. Bama</i>	<i>9,90,000</i>
<i>3</i>	<i>D. Chinnakannu</i>	<i>23,40,000</i>

What we find is that though Id. Assessing Officer has mentioned in his order dated 28.08.2015, that assessee had not responded to its notices dated 10.2.2015, 19.02.2015 and 16.03.2015, assessee had indeed filed a submission before Id. Joint Commissioner of Income Tax on 17.12.2014. Relevant part of this letter which deals with the issue on hand is reproduced hereunder:-

Sub : *Submission of explanation - Reg*

Assessee : *Space N Place Promoters Private Limited, No.18,
V.V. Koil Street., Periamet, Chennai - 600 003.*

PAN : *AAKCS 0817 N/ 2011-12*

Ref: *(1) Your notice u/s.271D/ Dated 10.11.2014.
(2) Your notice u/s.271D I Dated:03.12.2014.*

In connection with the above, I humbly wish to bring to your kind notice the following points for your kind consideration:

(1) In the Balance Sheet of the above Assessee as at 31.03.2011, there were unsecured Loans of Rs,20.00 Lakhs borrowed by the above Assessee from Mr. Ketan Charudutt Apte (PAN ALOPA 6141 P) - Rs. 10,00 Lakhs and from Mrs. Radhika Charudutt Apte [PAN: AKSPA 2701 N] - Rs. 10.00 Lakhs - being the Opinion. Balances as at 01.04.2010 and no fresh Loans were taken by the above assessee ' during the Financial Year: 2010 - 11 and no repayment of the

above Loans was made during the financial Year : 2010 - 11 . Apart from the above , there were no other unsecured Loans or Deposits in the Balance Sheet and the question of applicability of the provisions of Sec.269SS and 269T and Penal provisions of Sec. 271D did not arise in this case

(2) Even in the Scrutiny assessment order passed by the Learned Assessing Officer dated 25.03.2014, there was no reference: about acceptance and repayment of deposits by the above Assessee in cash except the additions for unproved expenditure and only the penal proceedings u/s. 271 (1) (c) were initiated and not any other proceedings.

(3) Even in the notice u/s.271D sent by your Office dated 10.11.2014, it was only mentioned as hereunder :

“Whereas in the course of proceedings before me for the assessment year 2011-12, it appears to me that you:

- *Have without*
- *Have concede the particulars of income or furnished inaccurate particulars of such income.*

Even in the letter cited above, there was no mention about the reasons for which the Penalty Proceedings u/s. 271 D were initiated. I wish to bring to Your kind notice that we have not concealed any income or furnished inaccurate particulars of any income.

In this regard, I humbly wish to bring to Your kind notice that since the above Assessee did not receive any fresh Loan or Deposits and did not repay any old Loan during the Previous Year : 2010 - 11 , the initiation of Penal proceedings did not arise and even Your Notice cited above did not specify the reasons for which Penalty proceedings u/s.271D were initiated.

But from the discussions during the Scrutiny Hearing Proceedings, I assume that the Penal Proceedings- u/s. 271 D would have been initiated for the Advances Received by the Company from it's Customers for Purchase of UDS share of Land and for construction of Flat on their behalf, and from Promoters for day to day expenses of the Assessee Company in cash during the Previous Year: 2010 - 11.

If the Penalty Proceedings were initiated only for the above purpose, I hereby humbly request Your goodself to kindly consider the following facts in this regard :

(1) Advances Received from Customers:

*(a) Name: Mrs. K. Padma - Rs. 12.66 lakhs on 18.03.2011.
Nature of Business: Trading in Handicrafts in Mamallapuram.
PAN: BEJPP 9610 R / Tambaram.*

Age : 71 Years.

Relationship with the Assessee: No Business/ Personal relationship with the Assessee - Flat booked through common Auditor.

(b) Name: Mrs. M.R. Jayalakshmi - Rs. 12.5 lakhs on 18.03.2011.

Nature of Business: Trading in Handicrafts.

PAN: AMYPJ 3234 B /Tambaram .

Age: 69 Years.

Relationship with the Assessee: No Business / personal relationship with the Assessee - Flat booked through common Auditor.

Both the above have given their Confirmation Letters individually in respect of the Advances given by them to the Assessee Company dated : 07.03.2014 alongwith Xerox copies of Acknowledgements and Annual Accounts for the Year Ended: 31.03.2011 and also the ledger copy of the Assessee in their books respectively in response to the summons dated 03.03.2014 issued to them by the Learned Assessing Officer .Being Aged Senior Citizens, they were not able to appear before the Learned Assessing Officer in person.

c) Name: Mr.S.Manohar- Rs.3.50 lakhs on 11.03.2011.

Nature of Business: Labour Contracts in Periamet.

PAN: AHLPM 6169 L / XI (3).

Relationship with the Assessee: No Business / personal relationship with the Assessee.

(d) Name: Mr. M. Anandan - Rs.5.00 lakhs on 08.03,2011.

Nature of Business: Labour Contracts in Periamet.

PAN : AAQP A 6963 Q I X (1).

Relationship with the Assessee: No Business / personal relationship with the Assessee.

Both the above have given their Sworn Statements individually in respect of the Advances given by them to the Assessee Company alongwith Xerox copies of Acknowledgements and Annual Accounts for the Year Ended : 31.03,2011 and also the ledger copy of the Assessee in their books respectively during their personal appearance in response to the summons issued to them by the Learned Assessing Officer .

From the above it could be seen that all the above parties had responded to the Summons issued to them without any Avoidance and given the proof alongwith their Income Tax Returns respectively wherein they have declared the advances given by them to the Assessee Company for purchase of Flats and I humbly wish to reiterate that such amounts were only Advances which will be adjusted against the cost of the Flat at the time

of handing over to them respectively and not Loans or Deposits to the Company which carry interest .

(2) Advances Received from Promoters:

- (a) Mr. A.P. Ashok kumar - Rs. 20,30,000/-
- (b) Mrs. D. Chinnakanu - Rs. 5,80,000/-
- (c) Mrs. C. Bama - Rs. 5,80,000/-

All the above are Land owners and the Promoters of Joint Venture of Choolaimedu Site and each one had given amounts as and when required by the Company for day to day expenses, Labour Payments and for other regular Construction activities of the Company whenever the funds were in shortage, and whenever the Company had excess funds, the Advances given by the above parties will be returned to him / her and for the temporary advances (as above), no interest will be given by the Company. In this regard, the company had to pay each of the above persons the amounts specified above respectively as at 31.03.2011.

The above facts alongwith the ledger copies of the account of the above Assessee in the Books of the above parties were submitted to the Learned Assessing Officer at the time of Personal appearance through their Authorized Representative in response to the summon issued to them.

In this regard , I humbly wish to bring to Your kind notice the following Points / Facts / Legal Decisions:

(1) The objects of the provision 269SS is to enable verification of Loans with a view to tackle Black Money , so that Genuine transfers should not attract Penalties. Where the transactions are genuine beyond any possible doubt , the provision should not be applied as they are not meant for such cases.

Relevance to the Assessee's Case: In the case of the Assessee ,both the Assessee and the Customers / Promoters did not hide the Advances and shown the Advances Received and Given respectively. in their respective Income Tax Returns which were submitted to the Learned Assessing Officer”.

A reading of the above letter clearly indicate that assessee had given information and particulars on the advances received from its

customers and money received from its promoters, well before the notices issued on 10.2.2015, 19.2.2015 and 16.03.2015. It is not disputed by the Revenue that the customers from whom assessee claimed receipt of advances had confirmed it through their letters and also filed ledger copies in response to summons issued by Id. Assessing Officer. Two of them had appeared before Id. Assessing Officer and their sworn statements were also recorded. In our opinion there were sufficient evidence available with the lower authorities, which clearly indicated that sums received from M.R. Jayalakshmi, S. Manohar, M. Anandan and K. Padma were nothing but advances against sale of flat. Section 269SS of the Act was substituted by Finance Act, 2015 w.e.f. 01.06.2015. The said Section as it stood before 01.06.2015 read as under:-

'269SS. Mode of taking or accepting certain loans and deposits – No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account if –

- (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
- (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not) the amount or the aggregate amount remaining unpaid; or
- (c) the amount of the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b)

is twenty thousand rupees or more”.

Subsequent to its substitution, the corresponding wordings in the Section are as under:-

“No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum ; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more” :

Specified sum has been defined through Explanation (iv) inserted by Finance Act, 2015 w.e.f. 01.06.2015, the said Explanation reads as under:-

“(iv) “specified sum” means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place”.

Thus, it is clear that advances or other receipts of money in relation of transfer of immovable property, whether or not such transfer took

place, came within the ambit of Section 269SS only w.e.f. 01.6.2015. Thus in our opinion receipts of cash by the assessee as advance against sale of flats were not covered u/s.269SS of the Act, for the impugned assessment year.

7. Coming to the second part of the cash receipts received from the promoters of the assessee company, explanation given by the assessee was never found to be incorrect. Nothing has been brought on record by the Revenue to show that the receipts were superfluous in nature and not for the business of the assessee. Had it been so, it would have come out in the scrutiny assessment done for the impugned assessment year. Admittedly, there were no adverse findings in such scrutiny. Hon'ble Jurisdictional High Court in the case of *Idyayam Publications Ltd, (supra)*, has clearly held that cash transactions in the current account of a company with its promoters, where such current account was a running one, could not be considered as loan or advances. There is no case for the Revenue that assessee had not produced ledger before Id. Assessing Officer during the course of assessment proceedings or that the accounts of the promoters in the books of the assessee were not in the nature of funds introduced for the running of its business. Hence, considering the judgment of Hon'ble Jurisdictional High Court in the case of *Idyayam Publications Ltd (supra)*, we are of the opinion that advances received

from the promoters in cash through their respective current accounts could not be considered as loan or advances coming within the ambit of Section 269SS of the Act.

8. Based on the discussions in paras 6 and 7, we delete the penalty levied on the assessee u/s. 271D of the Act.

9. In the result, the appeal of the assessee stands allowed.

Order pronounced on Thursday, the 21st day of March, 2019, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:21st March, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |