IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.480/Bang/2020: Asst.Year 2004-2005
ITA No.481/Bang/2020: Asst.Year 2005-2006
ITA No.482/Bang/2020: Asst.Year 2006-2007
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ITA No.487/Bang/2020: Asst.Year 2008-2009
ITA No.488/Bang/2020: Asst.Year 2009-2010
ITA No.489/Bang/2020: Asst.Year 2009-2010

Sri.Gopal S.Pandith Prop.M/s.Pandith Developers "Murali Sadan", Door No.9, Block 13, SBM Colony, 2nd Stage Srirampura Mysore – 570 023. **PAN : AEQPR4615Q.**	v.	The Joint Commissioner of Income-tax, Central Range Panaji, Goa.
(Appellant)		(Respondent)

ITA No.496/Bang/2020: Asst.Year 2007-2008

Smt.Rajeshwari Pandith Prop.M/s.Pandith Developers "Murali Sadan", Door No.9, Block 13, SBM Colony, 2nd Stage Srirampura Mysore – 570 023. **PAN : AEPPP4638G.**	v.	The Joint Commissioner of Income-tax, Central Range Panaji, Goa.
(Appellant)		(Respondent)

Appellants by : Sri.R.Chandrashekar, Advocate
Respondent by : Dr.S.Sundar Rajan, Addl.CIT-DR

Date of Hearing : 20.10.2020		**Date of Pronouncement : 21.10.2020**

O R D E R

Per George George K, JM :

These appeals at the instance of two assessees (husband and wife) are directed against eleven orders of the CIT(A), all dated 05.03.2020. In the case of Sri.Gopal S.Pandith, there are

ten appeals and the relevant assessment years are 2004-2005 to 2009-2010. In the case of Smt.Rajeshwari Pandith, there is one appeal and the relevant assessment year is 2007-2008.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. The issues raised in these appeals are whether the CIT(A) was justified in confirming penalty imposed u/s 271D of the I.T.Act and 271E of the I.T.Act. We shall first adjudicate the case of Sri.Gopal S.Pandith.

4. The brief facts in the case of Sri.Gopal S.Pandith, are as follow:

The assessee an individual, who is engaged in the business as a developer and builder. The assessee had taken loans from various persons. These loans were taken and repayment were made in cash, thereby violating the provisions of section 269SS and 269T of the I.T.Act. The Joint Commissioner of Income-tax, for violation of the provisions of section 269SS and 269T of the I.T.Act, imposed penalty u/s 271D and 271E of the I.T.Act, being a sum equal to the loan / deposit accepted and loan / deposit repaid.

4.1 Aggrieved by the orders imposing penalty u/s 271D and 271E of the I.T.Act, the assessee filed appeals before the first appellate authority. The CIT(A) confirmed the penalty imposed by the JCIT. On further appeal, the ITAT vide order dated 21.11.2017 in ITA Nos.1084, 1085, 1090 to 1971/Bang/2015,

restored the cases to the CIT(A). The ITAT held that the CIT(A) did not adjudicate the contentions of the assessee that the orders imposing penalties u/s 271D and 271E of the I.T.Act are barred by limitation. The Tribunal also directed the CIT(A) to consider the issue on merits afresh, in the event the CIT(A) holds that the orders imposing penalties u/s 271D and 271E of the I.T.Act are not time barred.

4.2 Pursuant to the ITAT's order, the CIT(A) passed orders on 05.03.2020, wherein he held that the orders imposing penalties u/s 271D and 271E of the I.T.Act are not time barred. On merits, the contention of the assessee that provisions of section 269SS and 269T of the I.T.Act does not have application and there was `reasonable cause' as mandated u/s 273B of the I.T.Act when transactions are between relations (in these cases majority of the transactions are between wife, son and daughter), was rejected by the CIT(A).

4.3 Aggrieved by the orders of the CIT(A), the assessee has filed these appeals before the Tribunal. The assessee has filed paper books enclosing the copies of the judgment relied on, the ledger extracts of Sri.Hirenkumar Navinchandra Patel in the books of account of the assessee, etc. Though the assessee has raised several legal grounds, the primary argument by the learned AR was on merits. It was contended that the transactions of taking loan and for repayment of the loans are mainly with the relations, hence, the provisions of section 269SS and 269T of the I.T.Act are not applicable. In this context, the learned AR relied on the orders of the Tribunal in

the case of Smt.Deepika v. Addl.CIT [ITA No.561/Bang/2017 – order dated 13.10.2017] and in the case of Shri Sanmathi Ambanna v. JCIT [ITA No.782/Bang/2017 – order dated 02.01.2019] As regards the loans taken and repayment made by the assessee from persons other than relations, it was contended that the assessee was engaged in the business of development of plots and Sri.Hiren Kumar Patel was a business associate of the assessee. The ledger account of Sri.Hiren Kumar Patel in the books of the assessee was placed on record. It was contended by the learned AR that this is running account and these transactions are in the course of normal business of the assessee. Therefore, it was submitted that the amounts received from Sri.Hiren Kumar Patel were never a loan / advance.

4.4 The learned Departmental Representative supported the orders passed by the Income Tax Authorities.

5. We have heard the rival submissions and perused the material on record. The total penalty imposed u/s 271D of the I.T.Act for assessment years 2004-2005 to 2009-2010 is Rs.52,32,000. The penalty imposed u/s 271E of the I.T.Act was Rs.17,66,761 for assessment years 2006-2007 to 2009-2010. The details of the penalty imposed u/s 271D of the I.T.Act and u/s 271E of the I.T.Act, the relevant assessment years, the persons from whom the loans / deposits are repaid, the persons to whom loans / deposits are repaid in cash, are detailed below:-

I. Penalty u/s 271D of the I.T.Act

Asst.Year	ITA No.	Amount of penalty	Amount considered for penalty	Persons	Relation-ship
2004-05	480/B/2020	50,000	50,000	Rajeswari G.Pandith	Wife
2005-06	481/B/2020	5,00,000	5,00,000	Hirenkumar Patel	Others
2006-07	482/B/2020	2,32,000	2,32,000	Sushma G.Pandith	Daughter
2007-08	484/B/2020	13,60,000	13,60,000	i. Sushma G.Pandith Rs.4,00,000 ii.Deepak Rs.1,50,000 iii.Sabita Rs.1,00,000 iv. Rajeshwari G.Pandith Rs.2,00,000 v. Savita Rs.1,50,000 vi. Hiren Kumar Patel Rs.3,60,000	i. Daughter ii. Son iii.Daughter iv. Wife v.Daughter vi. Others
2008-09	486/B/2020	15,50,000	15,50,000	i. Rajeshwari G.Pandith Rs.12,00,000 ii.Hiren Kumar Patel Rs.3,50,000	i. Wife ii.Others
2009-10	488/B/2020	15,40,000	15,40,000	Rajeswari G.Pandith	Wife
Total			**52,32,000**		

II. Penalty u/s 271E of the I.T.Act

Asst.Year	ITA No.	Amount of penalty	Amount considered for penalty	Persons	Relation-ship
2006-07	483/B/2020	50,000	50,000	Hirenkumar Patel	Others
2007-08	485/B/2020	3,10,000	3,10,000	Hirenkumar Patel	Others
2008-09	487/B/2020	12,56,761	12,56,761	Rajeswari G.Pandith	Wife
2009-10	489/B/2020	1,50,000	1,50,000	Rajeswari G.Pandith	Wife
Total			**17,66,761**		

5.1 From the above, it is clear that majority of loans / deposits are taken from relatives, viz., wife, son and daughters. Out of the total loans / deposits accepted by the assessee amounting to Rs.52,32,000 for the assessment years 2004-2005 to 2009-2010, a sum of RS.40,22,000 are transactions between the assessee and his wife, son and daughters. Similarly, out of

loans / deposits repaid in cash by the assessee totaling to Rs.17,66,761, a sum of Rs.14,06,761 are repayments to assessee's wife.

5.2 The co-ordinate Bench of the Bangalore Tribunal in the case of Smt.Deepika v. Addl.CIT [ITA No.561/Bang/2017 – order dated 13.10.2017] had held that transactions between family members would not attract penalty u/s 271D of the I.T.Act. For the sake of convenience, we extract below the operative portion of the order passed by the co-ordinate Bench in the above said case.

> *"7. We have considered the rival submissions. The facts as decided by ITAT Kolkata in the case of Dr.B.G.Panda were that loan transactions were carried out in cash in violation of the provisions of Sec.269SS of the Act between husband and wife. On the question of levy of penalty u/s.271D of the Act, the Tribunal held as follows :-*
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> > "Section 269SS is applicable to the deposits or loan. It is true that both in the case of a loan and in the case of a deposit, there is a relationship of debtor or creditor between the party giving money and the party receiving money. In the case of deposit. the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposits the money and the benefit normally being the earning of interest from the party who customarily accepts deposit. In the case of loan it is the borrower at whose instance and for whose needs the money is advanced. The borrowing is primarily for the benefit of a borrower although the person who lends the money may also stand to gain thereby earning interest on the money lent. In the instant case, this condition was not applicable because there was no relationship of the depositor or a creditor as no interest was involved. This was neither a loan nor a deposit. At the same time. the words 'any other person' are obviously a reference to the depositor as per the intention of the Legislature. The communication/transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Otherwise, there would be a powerful tendency to disturb the peace of families. to promote domestic broils, and to weaken or to destroy the feeling of mutual confidence which is the most enduring solace of married life.

> In the instant case, the wife gave money to husband for construction of a house which was naturally a joint venture for the property of the family only. This transaction was not for commercial use. The amount directly received by the husband. i.e .. the assessee. was to the extent of Rs. 17.000 only and the balance amount of Rs. 26.000 was given by payment directly to the supplier of the material required for the construction of the house. Though the expenditure was apparently incurred by the husband being the karta/head of the family, it could not be said that the wife could not have any interest of her own in this house being constructed. The transaction was neither loan nor any gift as no 'interest' element was involved and there was no promise to return the amount with or without interest. It was clear that the money given by the wife was a joint venture of the family. Taking into consideration overall facts and circumstances of the case, it could be said that the aforesaid piece of legislation was not applicable in the instant case. By taking the liberal view and applying the golden rule of interpretation, the assessee had a reasonable cause within the meaning of section 27 3B. Therefore. the penalty should be deleted.

8. In the case of ACIT Vs. Vardaan Fashion (2015) 60 Taxmann.com 407 (Delhi-Trib.) it was held that where the Assessee intended to purchase a property jointly for which assessee's wife had advanced a sum of money to assessee and when deal for purchase of such house property did not materialize, assessee refunded said amount through cheque to his wife. On the question whether acceptance of cash by husband from his wife would amount to taking of loan or advance in strict sense of section 269SS , the tribunal held that it cannot be construed as loan attracting provisions of Sec.269SS of the Act and therefore no penalty under section 271D could be levied.

9. The Income-tax Appellate Tribunal, Amritsar Bench, in the case of ITO v. Tarlochan Singh [2003] 128 Taxman 20 (Mag) was concerned with a case where the husband had taken the cash of Rs. 70,000 from his wife for the purpose of investment in the acquisition of immovable property. The Assessing Officer had levied the penalty under section 271D which was cancelled by the Income-tax Appellate Tribunal holding as under :

> "Even keeping in view the contents of the Departmental Circular No. 387 [1985] 152 ITR (St.) 1), it was never the intention of the Legislature to punish a party involved in a genuine transaction. Therefore, by taking a liberal view in the instant case, the assessee had a reasonable cause within the meaning of section 273D. Thus, keeping in view the entire facts of the instant case, and also keeping

> in view the intention of the Legislature in enacting the provisions of section 269SS, it was to be held that the assessee was prevented by sufficient cause from receiving the money by an account payee cheque or account payee bank draft. In the instant case, the assessee was of the opinion that the amount in question did not require to be received by an account payee cheque or account payee draft. Thus, there was a reasonable cause and no penalty should have been levied.
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> From the above, it would be clear that the assessee had taken plea that firstly there was no violation of the provisions of section 269SS. Secondly, there was a reasonable cause. Thirdly, the assessee was under the bona fide belief that he was not required to receive the amount otherwise than by an account payee cheque or account payee draft. As an alternative submission, it was contended that the default could be considered either technical or venial breach of the provisions of law and, therefore, no penalty under section 271D was leviable.
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> In view of the above discussion, no penalty under section 271D was leviable. It is well-settled that penalty provision should be interpreted as it stands and, in case of doubt, in a manner favourable to the taxpayer. If the court finds that the language is ambiguous or capable of more meaning that the one, then the court has to adopt the provision which favours the assessee, more particularly where the provisions relate to the imposition of penalty.
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> In view of the above, the penalty sustained by the Commissioner (Appeals) was cancelled."

10. The ratio of the above decision of the Income-tax Appellate Tribunal, Amritsar Bench, would be squarely applicable to the facts of the assessee's case. Here also, the daughter and member of the HUF have given money for certain specific purpose. The source and genuineness of the loan has been accepted by the AO. The cash loans in question therefore cannot be said fall within the mischief of Sec.269SS of the Act as near relatives cannot be said to be "Other person" within the meaning of Sec.269SS of the Act. In any event in the circumstances of the case, there was reasonable cause for accepting loans in cash.

11. In the case of CIT v. Sunil Kumar Goel [2009] 315 ITR 163/183 Taxman 53 , the Hon'ble Punjab and Haryana High Court held as under :

> "A family transaction, between two independent assessees, based on an act of casualness, specially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax

> effect, established 'reasonable cause' under section 273B of the Act. Since the assessee had satisfactorily established 'reasonable cause' under section 273B of the Act, he must be deemed to have established sufficient cause for not invoking the penal provisions of sections 271D and 271E of the Act against him. The deletion of penalty by the Tribunal was valid."
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> *12. That the ratio of the above decision of the hon'ble Punjab and Haryana High Court would also be squarely applicable in respect of cash transaction between the assessee and his near relatives.*
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> *13. In the case of M.Yeshodha 351 ITR 265(Mad), the Hon'ble Madras High Court held that transaction of loan between father in law and daughter in law in cash cannot be subject matter of levy of penalty u/s.271D of the Act.*
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> *14. In the light of the aforesaid judicial pronouncements, we are of the view that imposition of penalty u/s.271D of the Act cannot be sustained. The same is directed to be deleted. The appeal of the Assessee is allowed."*

5.3 In the instant case also, we have noticed that the assessee has made transactions of taking loan from his wife, son and daughters, who are family members. We notice that the co-ordinate Bench has followed the judgment rendered by the Hon'ble Punjab & Haryana High Court in the case of Sunil Kumar Goel (supra), wherein it has been held that the family transactions would fall within the meaning of "reasonable cause" u/s 273B of the Act. Further, the Hon'ble Madras High Court has cancelled the penalty in respect of loan transactions between father-in-law and daughter-in-law in the decision of M.Yesodha (supra). The decision rendered in the case of Smt.Deepika was followed by another co-ordinate Bench in the case of Shri Sanmathi Ambanna (supra). Accordingly, consistent with the view taken by the co-ordinate Bench in the

case of Smt.Deepika (supra), which has been rendered by following various decision of High Courts and Tribunal, we hold that the loan / deposits accepted by the assessee in cash from his wife, son and daughter would not suffer penalty u/s 271D of the I.T.Act. Therefore, we delete the penalty of Rs.40,22,000, imposed u/s 271D of the I.T.Act. The judicial pronouncement rendered in the context of imposition of penalty u/s 271D of I.T.Act would apply *mutatis mutandis* for penalty imposed u/s 271E of the I.T.Act. Therefore, for repayment of loan to wife, the penalty imposed amounting to Rs.14,06,761 u/s 271E of the I.T.Act is deleted.

5.4 As regards the loans / deposits accepted from other than relatives, viz., Sri.Hiren Kumar Patel, it was contended that the assessee and Sri.Hiren Kumar Patel are business associates, who are jointly developing plots and selling them. The learned AR produced copies of the ledger extracts of Sri.Hiren Kumar Patel in the books of account of the assessee to prove that it is a running / current account. It was submitted by referring to the ledger extract that there are frequent transactions indicating clearly a business transaction and the receipts cannot be construed as a loan /deposits. On a query from the Bench whether there is a business understanding in writing between the assessee and Sri.Hiren Kumar Patel, the learned AR submitted in the affirmative and requested the matter may be examined by the A.O. The learned Departmental Representative did not have any serious objection for the matter being restored to the A.O. Therefore, for the imposition of penalty u/s 271D and 271E of the I.T.Act in context of

transaction the assessee had with Sri.Hiren Kumar Patel, the matter is restored to the A.O. The assessee shall cooperate with the A.O. and shall not seek unnecessary adjournment. The assessee shall prove his case that the transaction he had with Sri.Hiren Kumar Patel is a business transaction and not a loan / deposit. It is ordered accordingly.

5.5 As mentioned earlier, the assessee had raised various legal grounds. However, the learned AR confined his submissions to the above issues adjudicated on merits.

ITA No.496/B/2020:In the case of Smt.Rajeshwari Pandith

6. This appeal is concerning assessment year 2007-2008. The solitary issue for consideration is whether the CIT(A) is justified in confirming the penalty imposed u/s 271D of the I.T.Act amounting to Rs.2,93,900.

6.1 Briefly stated the facts of the case are as follow:

The JCIT had imposed penalty u/s 271D of the I.T.Act for a sum of Rs.2,93,900. According to the JCIT, the assessee had accepted loan of Rs.2,93,900 in cash from Sri.Hiren Kumar Patel, thereby violating the provisions of section 269SS of the I.T.Act. The penalty imposed by the JCIT was confirmed by the CIT(A). On further appeal, the ITAT restored the issue to the CIT(A) in ITA No.1060/Bang/2015 (order dated 21.11.2017). The ITAT held that the CIT(A) did not adjudicate the contentions of the assessee that the order imposing penalty u/s 271D of the I.T.Act, is time barred. The ITAT also directed the CIT(A) to consider the issue on merits afresh, in the event, the

CIT(A) holds that the order of penalty u/s 271D of the I.T.Act is not time barred. Pursuant to the ITAT order, the CIT(A) passed order on 05.03.2020. The CIT(A) held that the order u/s 271D of the I.T.Act is not time barred. On merits, the penalty imposed u/s 271D of the I.T.Act amounting to Rs.2,93,900 was confirmed.

6.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before the ITAT. The learned AR submitted that the amounts received from Sri.Hiren Kumar Patel was disclosed under the head "current accounts" in the books of account of the assessee and not under the head "loans". Therefore, it was submitted that the inference that the transaction is loan is without any material and penalty treating the transaction as loan is not sustainable. Further, it was submitted that the sum of Rs.2,93,900 was paid by Sri.Hiren Kumar Patel, on behalf of the assessee, for the purchase of flat at Bangalore. It was submitted that the payments were made directly to the builder and the said payment was recorded in assessee's books of account by passing of a journal entry without actually receipt of cash. It was submitted that mere journal entries would not attract the provisions of section 269SS of the I.T.Act. In support of the above contention, the learned AR relied on the judgment of the Hon'ble Delhi High Court in the case of *CIT v. Noida Toll Bridge Co. Ltd. [(2003) 262 ITR 260 (Del.)]*.

6.3 The learned Departmental Representative supported the orders of the Income Tax Authorities.

7. We have heard the rival submissions and perused the material on record. The Hon'ble Delhi High Court in the case of *CIT v. Noida Toll Bridge Co. Ltd. (supra)* had held that passing of journal entry without actual receipt of cash would not attract provisions of section 269SS of the I.T.Act. The assessee's case is that a total sum of Rs.2,93,900 has been paid by Sri.Hiren Kumar Patel to a builder for the purchase of a flat on behalf of the assessee. It was submitted that the assessee had recorded in her books of account, by passing a journal entry by crediting Sri.Hiren Kumar Patel's accounts and debiting the flat purchase account. However, only the ledger account of Sri.Hiren Kumar Patel in the books of account of the assessee alone is placed on record. To understand whether it is a journal entry, the ledger account of the developer in the books of account of the assessee also needs to be perused. In absence of the same, in the interest of justice, we restore the issue to the files of the A.O. The A.O. shall examine whether the assessee in her books of account only passed a journal entry and was not in receipt of money from Sri.Hiren Kumar Patel. In view of the dictum laid down by the Hon'ble Delhi High Court in the case of *CIT v. Noida Toll Bridge Co. Ltd. (supra)*, if the assessee had passed only a journal entry, the provisions of section 269SS would not be attracted and penalty u/s 271D of the I.T.Act cannot be imposed. It is ordered accordingly.

8. In the result –

(i) ITA Nos.480, 482, 487, 488 and 489/Bang/2020 (in the case of Sri.Gopal S.Pandith) are allowed.

(ii) ITA Nos.481, 483, 484, 485 and 486/Bang/2020 (in the case of Sri.Gopal S.Pandith)are partly allowed for statistical purposes.

(iii) ITA No.496/Bang/2020 (in the case of Smt.Rajeshwari Pandith) is allowed for statistical purposes.

Order pronounced on this 21st day of October, 2020.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 21st October, 2020.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-Mangaluru.
4. The Pr.CIT-Mangaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore