

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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| Judgment Reserved On<br>18.01.2019 | Judgment Pronounced On<br>05.02.2019 |
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**CORAM:**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**  
and  
**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

Tax Case Appeal Nos.6 to 8, 12 to 19 and 21 of 2019  
and  
Civil Miscellaneous Petition Nos. 71, 72, 75, 76, 78, 79, 130, 131, 135, 137, 138, 139, 146, 149, 181, 182, 188, 189, 196, 199, 208, 209 and 314 and 316 of 2018

T.C.A.No.6 of 2019:-

M/s.Vasan Healthcare P Ltd.,  
Fourth Floor, Lancor West Minister,  
No.70, Dr.Radhakrishnan Salai,  
Mylapore, Chennai – 600 004,  
(Now at No.52, Old No.37A)  
J.J. Road, Teynampet,  
Chennai – 600 018.  
PAN: AACCV 7028E

.. Appellant

-vs-

The Additional Commissioner of Income Tax  
Central Range-2, Chennai.

.. Respondent

APPEAL under Section 260A of the Income Tax Act, 1961, against the order dated 26.11.2018, made in I.T.A.No.2196/Chny/2018 on the file of the Income Tax Appellate Tribunal, "D" Bench, Chennai, for the Assessment Year 2015-2016.

For Appellants : Mr.A.S.Sriraman &  
(In all the Appeals) Mr.S.Sridhar

For Respondent : Mr.T.R.Senthil Kumar,  
(In all the Appeals) Senior Standing Counsel &  
Ms.K.G.Usharani

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**COMMON JUDGMENT**

*T.S.Sivagnanam, J.*

These appeals have been filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by two assesseees, viz., M/s.Vasan Healthcare Private Limited; and M/s.Vasan Medical Centre (India) Private Limited, challenging the common order passed by the Income Tax Appellate Tribunal, "D" Bench, Chennai (for brevity "the Tribunal"), dated 26.11.2018, in I.T.A.Nos.2196, 2194, 2195, 2198, 2204, 2199, 2203, 2205, 2200, 2202, 2201 & 2197/CHNY/2018, for the assessment years 2015-16, 2014-15, 2014-15, 2012-13, 2015-16, 2012-13, 2014-15, 2015-16, 2013-14, 2014-15, 2013-14 and 2015-16, respectively. Since identical substantial questions of law were raised by the assesseees in these appeals, we heard the appeals together and dispose of the same by this common order.

2.The above appeals have been filed raising the following common substantial questions of law:-

“(i) Whether the provisions of section 271D of the Act would be applicable to a running account maintained between the promoter/director and the Appellant company in the context of the transactions covered in section 269SS of the Act?

(ii) Whether the provisions of section 271E of the Act would be applicable to a running account maintained between the promoter/director and the Appellant company in the context of the transactions covered in section 269T of the Act?

(iii) Whether the Appellate Tribunal was correct in imposing penalties u/s 271D and 271E of the Act pertaining to the transactions between the promoter/director and the Appellant company despite such transactions were accepted as genuine in view of taxing of such sum in the hands of the financier and further in imposing penalties u/s 271D and 271E of the Act in the hands of the promoter/director?

(iv) Whether the provisions of sections 271D and 271E of the Act envisage levy of such penalties at different stages in a chain of transaction(s) routing the same money leading to the unreasonableness in interpretation of the discretionary provisions in

imposing such penalties?

(v) Whether the utilization chart could be equated to a cash flow statements proving perversity in the findings of facts in para 12 of the impugned order while the cash flow statements filed at every stage of the present proceedings were completely overlooked in sustaining the levy of penalties u/s 271D and 271E of the Act?

(vi) Whether commercial expediency, business compulsions and other related factors would constitute reasonable cause within the scope of section 273B of the Act in the context of using the discretion for imposing/for dropping the proceedings u/s 271D and 271E of the Act?"

3. Tax Case Appeal No.6 of 2019 is taken as the lead case. The assessee in the said appeal is M/s. Vasan Healthcare Private Limited.

4. The facts in the lead case are that, the assessment for the year under consideration, viz., 2015-16, was completed on 29.12.2017 under Section 143(3) read with Section 153C of the Act, in consequence to the search operations conducted on 01.12.2015, under Section 132 of the Act. The Assessing Officer/respondent determined the taxable total

income at Rs.411,55,52,450/- against the returned income of (-) Rs.107,68,39,993/-. The Assessing Officer made certain additions while completing the assessment. The said assessment has been challenged by way of appeal before first appellate authority and the same is pending. The respondent imposed penalty on the assessee by order dated 30.01.2018, pursuant to the proceedings initiated under Section 271D of the Act, dated 27.07.2017, for violation of Section 269SS of the Act. The assessee while responding to the show cause notice issued under Section 271D read with Section 269SS of the Act, stated that the transactions between one Mr.J.D., (Financier) and Dr.A.M., one of the Directors of the assessee (The Director) were already under scrutiny inasmuch as there was no direct nexus between Mr.J.D., and the assessee, and the amounts borrowed from Mr.J.D., by the Director was introduced through his running account with the company for the purpose of meeting/running expenses of the assessee.

5.The assessee further stated that the proposal for imposing penalty in the hands of the assessee relating to the transactions between the Director and the assessee during the Financial Years 2011-12 to 2014-15 was a total sum of Rs.143.25/- Crores. It was further stated that these are accumulations of amounts received from Mr.J.D.,

and introduced by him into the company. It was further stated that the total sum of money credited to the bank account of the assessee-company is Rs.113.65 Crores, and the balance had been deducted for arrears in repayment of earlier borrowings and interest dues by the Director, which worked out to Rs.29.60 Crores.

6.Further, the assessee submitted that what is relevant alone should be considered as borrowings from Mr.J.D., and only the "peak credit" and the summation should be taken. Apart from the above, certain other factual details were mentioned and in sum and substance, the assessee contended that it is only a running account maintained by the assessee with the Director to manage the funds needed to run the business and it is not a borrowing account or a loan account of the assessee-company. After considering the objections and after hearing the Director in person, the Assessing Officer confirmed the proposal in the show cause notice and imposed penalty under Section 271D of the Act, by order dated 30.01.2018. This order was put to challenge before the Commissioner of Income-tax (Appeals)-18 (for brevity "the CIT(A)"), who confirmed the same by order dated 25.06.2018. The assessee challenged the order of the CIT(A) before the Tribunal, which rejected the appeal, by common order dated 26.11.2018, and this is

how the assessee is before us by way of these tax case appeals raising the substantial questions of law as mentioned above.

7. We may, at this stage, point out that in these batch of cases, penalty has been imposed on the assessee under Sections 271D and 271E of the Act.

8. Mr. A. S. Sriraman, learned counsel for the appellant/assessee raised the following contentions:-

8.1. If the impugned order of the Tribunal is allowed to stand, it will result in multiplicity of penalty proceedings on the Director as well as the company in respect of the same transaction. In this regard, it is submitted that so far as the Managing Director is concerned, penalty proceedings initiated under Sections 271D and 271E of the Act are now pending before the Tribunal in I.T.A. Nos. 2185 to 2192/Chny/2018 and the said penalty proceedings also arise out of the same transaction. It was contended that this fact was made known to the Tribunal when the present appeals were heard by the Tribunal. Therefore, the Tribunal ought to have decided all the appeals, i.e., the appeals filed by the Director as well as the appeals filed by the assessee-company and taken a decision in the matter, and failure to do so, has resulted in an

erroneous order, which calls for interference.

8.2.It is the next submission of the learned counsel that the transactions between Mr.J.D. and the Director; and the Director and the assessee-company if treated as separate transactions, then the transactions will not be covered under Section 269SS of the Act. Further, the Tribunal failed to note that no interest was paid to the Director by the company when the loans taken by him from Mr.J.D., were deposited in the current account of the company.

8.3.It is the next submission of the learned counsel that, in fact, alternate submission is that the Tribunal failed to see the nature of transaction, which was done by the Director with the company with the borrowed funds from Mr.J.D. The amounts were deposited on the same day in the current account of the company and from the said amount, the salaries of the employees were paid; rents which were payable for the buildings leased out by the assessee were paid; and the other EMI commitments were honoured, and this will clearly show the bona fides of the assessee and the assessee having shown reasonable cause for effecting such borrowals, especially for payment of salary and other commitments, ought to have vacated the penalty imposed on the

assessee.

8.4.As an additional submission, it was contended that the Tribunal failed to scrutinise as to how the borrowed funds were utilized by the company especially when the assessee was able to establish that the funds were utilized for business exigencies and this will show the genuineness of the transaction and the assessee having shown reasonable cause, penalty should not have been imposed on the assessee.

8.5.Alternatively, it was contended that the total transaction in cash between the assessee and the Director was to meet the expenditure of Rs.143.25 Crores, but the peak of the cash deposits was only Rs.22.2 Crores, being the maximum amount outstanding at any point of time for the three years. Therefore, it is submitted that if the assessee's case relating to "reasonable cause" is found to be not acceptable, then the penalty should have been restricted to the peak of the cash deposits.

8.6.It is further submitted that the Tribunal did not render any specific finding with regard to the multiplicity of penalty proceedings,

that is, both in the hands of the assessee-company and the Director in respect of the same transaction.

8.7.The learned counsel submitted that the decision of this Court in **Commissioner of Income-tax vs. Idhayam Publications Ltd., [2006] 285 ITR 221 (Madras)** fully supports the case of assessee, as in the said case also, there was a running current account in the name of one S.V.S., and he used to pay the money in the current account and used to withdraw the money also from the current account and taking note of the nature of transaction, the Division Bench held that the transaction does not fall within the meaning of loan or advance and there is no violation of Section 269SS of the Act.

8.8.The learned counsel relied on the decision of the Division Bench of this Court in the case of **CIT vs. Kailash Triple Sterlized Water (Chennai) (P) Ltd., (2007) 75 CCH 1138 ChenHC**, which was rendered following **Idhayam Publications Ltd.** (supra).

8.9.Stressing upon the genuinity of the transaction and the reasonable cause shown, the learned counsel referred to the decision of the Division Bench of this Court in **CIT vs. Lakshmi Trust CO., (2008)**

**303 ITR 0099** and submitted that the genuineness and bona fides of the transaction should have been considered by the Tribunal.

8.10. By relying on the decision of the Division Bench of this Court in **CIT vs. Deccan Designs (India) (P.) Ltd., [2012] 347 ITR 580 (Madras)**, it is submitted that the expenses incurred for the purpose of disbursement of salaries to the employees was held to be a reasonable cause.

8.11. Reliance was placed on the decision of this Court in **CIT vs. Balaji Traders, [2008] 303 ITR 312 (Madras)**, which dealt with business exigencies forcing an assessee to take cash loans for the purpose of honouring its cheque commitments, the creditors were genuine persons and the transactions were held to have been satisfactorily explained by the assessee.

8.12. Reliance was placed on the decision of the Division Bench of this Court in **CIT vs. T. Perumal (Indl.), [2015] 53 taxmann.com 17 (Madras)**, which also dealt with loans taken by an individual assessee to tide over emergency situation, which was held to be a reasonable cause in terms of Section 273B and therefore, penalty was deleted.

8.13. Reliance was also placed on the decision of the Division Bench of this Court in **CIT vs. M.Yesodha, (2013) 351 ITR 0265** wherein, the transaction in cash between the daughter-in-law and the father-in-law, on facts, was found to be a reasonable transaction and genuine one owing to the urgent necessity of money to be paid to the vendor of an immovable property.

8.14. The learned counsel distinguished the decision of the Division Bench of this Court in **P.Muthukaruppan vs. Joint Commissioner of Income-tax, [2015] 375 ITR 243 (Madras)** stating that the assessee therein was unable to prove that there was reasonable cause for availing the cash loan and therefore, the penalty was confirmed.

8.15. Similarly, the learned counsel sought to distinguish the decision of the Division Bench of this Court in **Nandhi Dhall Mills vs. CIT, [2015] 373 ITR 510 (Madras)** stating that in the said case, the assessee miserably failed to prove any reasonable cause against levy of penalty under Section 271D of the Act whereas, the assessee herein has been able to show sufficient and reasonable cause, which was not considered by the Tribunal.

8.16.Lastly, the learned counsel referred to the interim order passed by the Tribunal in the appeals, which are subject matter of these tax case appeals, and stated that multiplicity of penalty proceedings was one of the points, which weighed in the minds of the Tribunal for grant of interim order in favour of the assessee-company.

9.With the above submissions, the learned counsel prayed for setting aside the order of the Tribunal and answering the substantial questions of law in favour of the assessee-company.

10.Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the Revenue submitted that a search action, under Section 132 of the Act, was carried out in the business premises of the assessee on 01.12.2015, in connection with the search conducted with the Director of the assessee. Simultaneously, survey under Section 133A of the Act was carried out in the corporate office as well as the business premises of the assessee at Trichy and Chennai. Based on the materials found and seized, assessments were completed under Section 153C read with Section 153A of the Act for the assessment years 2010-11 to 2015-16; and under Section 143(3) of the Act for the assessment years 2016-17 on 29.12.2017. It is submitted that during the course of search/survey

proceedings, it revealed that the assessee was indulging in giving and taking huge cash loans from Mr.J.D., by the Director in contravention of the provisions of Sections 269SS and 269T of the Act. These cash loans were utilized to give and take back cash loans to the assessee-company. The cash loans received by the Director from Mr.J.D., was confirmed by Mr.J.D., during the course of search proceedings and accordingly, penalty was levied under Sections 271D and 271E of the Act.

11.It is further submitted that there is no multiplicity of penalty proceedings, as Section 271D of the Act refers to "a person" and "person" has been defined under Section 2(31) of the Act to include an individual, a company and other categories and both the company as well as the Director are independently liable to pay penalty for having violated Section 269SS of the Act. In this regard, the learned counsel referred to the decision in the case of **P.Muthukaruppan** (supra). Further, it is submitted that the assessee was not able to substantiate his claim for receiving amounts in cash from his Director in contravention of the provisions of Section 269SS of the Act. Likewise, the assessee failed to substantiate that cash loans received were deposited into the bank account and the funds were routed through the bank account, and they failed to justify as to why the same were

withdrawn in cash for repayment of loan to the Director, who had subsequently, repaid in cash to Mr.J.D.

12.The learned counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of **M.Sougoumarin vs. Assistant Commissioner of Income-tax, [2018] 95 taxmann.com 240 (Madras).**

13.It is further submitted that in identical circumstances, in a penalty proceedings arising under Section 271E of the Act, this Court in the case of **P.Baskar vs. CIT, 21 Taxmann.com 78 (Madras)**, upheld the levy of penalty. Further, it is submitted that the conduct of the assessee should be taken into consideration by this Court, as the assessee has been habitual in accepting huge cash loans and it is not a solitary instance, but has been recurring for several assessment years and there is absolutely no *bond fide* or genuinity in the transaction and one can reasonably conclude that unaccounted money has been laundered. The learned counsel further submitted that the decision in the case of **Idhayam Publications Ltd.** (supra) is clearly distinguishable on facts and it is a one time affair and not a recurring or a habitual case as that of the assessee.

14. With the above submissions, the learned counsel prayed for sustaining the order of the Tribunal.

15. Mr. A. S. Sriraman, in reply would submit that the decision in **M. Sougoumarin** (supra) is distinguishable on facts and cannot be applied to the assessee's case, since the assessee therein had not accounted for in the regular books of accounts of the assessee or the firm, and no business exigency or urgency has been established to follow a prolonged and persistent system of accepting and repaying loans only in cash. The assessee on the other hand were able to show reasonable cause as to why they have borrowed the loans and how they have to do so to sustain their business.

16. Heard the learned counsels for the parties and carefully perused the materials placed on record including the counter affidavits filed by the respondent.

17. Section 269SS was inserted by the Finance Act, 1984 with effect from 01.04.1984 made operative from 01.07.1984. The said provision states that no person shall after the 30<sup>th</sup> day of June, 1984, take or accept from any other person, any loan or deposit otherwise

than by an account payee cheque or account payee bank draft.

18. Section 276DD was inserted by the Finance Act, 1984, which dealt with contingency that may arise upon failure to comply with the provisions of Section 269SS of the Act. The said provision states that if a person takes or accepts any loan or deposit in contravention of the provisions of Section 269SS, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine equal to the amount of such loan or deposit.

19. Section 271D of the Act was introduced with effect from 01.04.1989, which is a penal clause, which provides for imposition of penalty for failure to comply with the provisions of Section 269SS, and Section 276DD was omitted with effect from 01.04.1989. Thus, subsequent to the introduction of Section 271D, the punishment of imprisonment was taken away and failure to comply with the provisions of Section 269SS attracted only levy of penalty of fine equal to the amount of loan or deposit to be taken or accepted.

20. In **Assistant Director of Inspection vs. Kum. A.B. Shanthi, [2002] 255 ITR 258 (SC)**, one of the questions, which arose for

consideration before the Hon'ble Supreme Court, was the constitutional validity of Section 269SS. The Hon'ble Supreme Court held that the object of introducing Section 269SS is to ensure that a tax payer is not allowed to give false explanation for his unaccounted money or if he has given false entries in his accounts, he shall not escape by giving false explanation for the same. It was further held that the main object of Section 269SS was to curb the menace of unaccounted money upon being unearthed giving explanation of borrowal and so-called lender also manipulates his records later to suit a plea of the taxpayer. In the said decision, the Hon'ble Supreme Court noticed Section 273B of the Act, which provides that notwithstanding anything contained in the provisions of Section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision, if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account payee cheque or account payee demand draft, then the penalty may not be levied. It was further held that undue hardship is very much mitigated by the inclusion of Section 273B and if there was a genuine or *bona fide* transaction and if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some *bona fide* reasons, the authority

vested with the power to impose penalty has got discretionary power. With these observations, the statutory provisions were upheld.

21. One of the grounds urged before us by Mr.A.S.Sriraman was that the assessee has shown reasonable cause for having availed loan transactions, availed loans by way of cash, which aspect was not appreciated by the Tribunal in a proper prospective. However, before we go into the said aspect, we would first like to decide the contention advanced by Mr.A.S.Sriraman regarding multiplicity of penalty proceedings.

22. The assessee's case is that for the very same transaction, Dr.A.M. has been visited with notices under Sections 271D and 271E of the Act. The Director is contesting those proceedings and the matter is now pending before the Tribunal. For the very same transaction, the company was also issued with notices under Sections 271D and 271E of the Act, which have now culminated in the impugned order of the Tribunal and the Tribunal ought to have heard the appeals filed by the Director as well as the company together and without doing so, the Tribunal erroneously sustained the penalty imposed on the company without deciding the appeals filed by the Director against the penalty

proceedings.

23. At the first blush, the arguments of Mr.A.S.Sriraman appear to be convincing. But after we heard Mr.T.R.Senthil Kumar for the Revenue and went through the factual matrix, we are of the clear view that the plea of multiplicity of penalty proceedings is untenable. In the preceding paragraph, we have referred to Section 271D of the Act, which was dealt with by the Hon'ble Supreme Court in **Kum. A.B. Shanthi**, (supra).

24. Section 271D introduced with effect from 01.04.1989 simultaneously omitted Section 276DD. Section 271D states that if "a person" takes or accepts any loan or deposit in contravention of the provisions of Section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit so taken or accepted. The answer as to whether there are any multiplicity of penalty proceedings in the cases on hand lies in interpretation of the words "a person". We need not labour much to find the answer, as Section 2(31) defines "person" in the following manner:-

**"Section 2(31):-** "Person" includes -

(i) an individual,

- (ii) a Hindu undivided family*
- (iii) a company,*
- (iv) a firm,*
- (v) an association of persons or a body of individuals, whether incorporated or not,*
- (vi) a local authority, and*
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.*

*[Explanation.- For the purposes of this clause, an association of personal or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;]*

25. The subtle but marked difference, which we should notice is that the present appeals arise out of a penalty proceedings and they are not quantum appeals wherein, tax has been imposed on the assessee. Thus, the theory of double taxation cannot be imparted in a penalty proceedings. The result is one or more persons will be liable for penalty under Section 271D of the Act, if he or they violate the provisions of Section 269SS of the Act. Thus, the contention that there is multiplicity of proceedings is a complete misnomer. This finding of ours is further

strengthened from the factual matrix of the case admitted by the assessee. The Director of the assessee has borrowed huge cash loans from Mr.J.D., who is stated to be a Financier. His quantum assessments are also now pending before the Tribunal for the assessment years 2012-13 to 2015-16. The said Mr.J.D., is shown to have extended huge cash loans to the Director. Accepting a loan in contravention to the provisions of Section 269SS automatically attracts Section 271D of the Act. Therefore, the Director having accepted cash loan in contravention to Section 269SS has become exposed to penalty proceedings under Section 271D. The Director is shown to have deposited the cash loans so obtained by him in his individual capacity into the current account/bank account of the assessee-company. The assessee-company having accepted the same in cash remittance, in contravention to Section 269SS, has also exposed themselves to levy of penalty under Section 271D. Therefore, there can be no mix up of these two individual transactions and the theory of multiplicity deserves to be out rightly rejected.

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26. Our observation is further strengthened, if we examine the language employed in Section 269SS, the erstwhile Section 276DD and Section 271D (with effect from 01.04.1989). One common and

conspicuous feature in all these provisions is that it uses the expression "no person", but Sections do not refer to an assessee, but refers to "a person". This aspect has to be borne in mind while considering the correctness of the penalty proceedings. Hence, this aspect also goes to show that the assessee cannot raise a plea of multiplicity of proceedings. Therefore, the said contention raised by Mr.A.S.Sriraman stands rejected.

27.The next contention advanced by Mr.A.S.Sriraman was largely based on the decision in **Idhayam Publications Ltd.** (supra). It is the submission that Section 269SS would not stand attracted, further, the transaction in **Idhayam Publications Ltd.** (supra) was also identical, where monies were deposited in the current account and though the balance sheet shows the amounts deposited by the Director in cash in the current account as unsecured loan from the Director, the Division Bench held that it is not a loan or an advance.

28.The facts in **Idhayam Publications Ltd.** (supra) are that one Mr.S.V.S. was the Director of the assessee-company. There was a running current account in the books of accounts of the assessee-company in the name of Mr.S.V.S. Mr.S.V.S., used to pay money in the

current account and used to withdraw money also from the current account. For the Revenue to sustain the levy of penalty under Section 271D, they had to establish that the amount was received by the assessee as a loan or deposit within the meaning of Section 269SS. The Division Bench referring to the Companies (Acceptance of Deposit) Rules, 1975 and in particular, Rule 2(b)(ix), held that any amount received from a Director or a shareholder of a Private Limited Company will not be a deposit.

29. We are required to see as to whether, on facts, the decision in **Idhayam Publications Ltd.** (supra) will assist the case of the assessee. After going through the factual matrix, our answer to this question is a definite "No". We substantiate the finding with the following reasons.

30. The assessee before the Tribunal contended that the assessee-company has not paid any interest to the Director and the transaction was in the form of a running account. It was further submitted that the Director would withdraw the cash from the assessee's current bank account and repay the same to the Financier, Mr.J.D. It was the further submission of the assessee that they, being a company, cannot take a

loan directly from the Financier, Mr.J.D., as taking of loan from individual was specifically barred. This admitted case of the assessee clearly reveals total lack of bona fides. Any amount of pleadings or statement of accounts can be of no assistance to the case of the assessee. The assessees, being Private Limited Companies, were clearly aware of the fact that no borrowal can be done by them from individuals. Thus, the Director of the company became the conduit. The Director received huge cash loan from Mr.J.D. The loans so obtained were deposited by him in cash in the bank account of the company. Thus, the Director acted as a shield to the transaction to give it a colour, as if it is the money given by the Director to the company. Furthermore, the same Director withdrew money from the running account of the company to pay back to the Financier, Mr.J.D. These facts will clearly show that the decision in the case of **Idhayam Publications Ltd.** (supra) can have no application to the case of the assessees.

31.Next, we move on to consider the submission of Mr.A.S.Sriraman as to whether the assessee had shown reasonable cause to escape from the rigour of levy of penalty under Sections 276D and 276E of the Act. Reference was made to paragraph 19 of the judgment in **Kum. A.B. Shanthi**, (supra). For better appreciation, the

same is quoted hereinbelow:-

*"19. It is important to note that another provision, namely, section 273B of the Act was also incorporated which provides that notwithstanding anything contained in the provisions of section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account payee cheque or account payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B. If there was a genuine and bona fide transaction and if for any the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power."*

32. According to the learned counsel, the account of the Director and the company were genuine and the loans received were utilized to pay the salaries, rents and EMI commitments. The amounts so received by the Director were deposited in the companies bank account on the very same day and the CIT(A) as well as the Tribunal failed to properly

appreciate the cash flow details produced by the assessee. In the preceding paragraph, we have commented upon as to how the Director has acted as a shield/conduit to the transaction to give it a colour, as if it is the monies of the Director, which were deposited in the companies bank account. Furthermore, we had pointed out as to how the assessee themselves accepted before the Tribunal that there is a clear prohibition from raising loans from individual. Taking these factual aspects into consideration, the Tribunal seriously doubted the bona fides of the plea raised by the assessee. The Tribunal had, in fact, done a fact finding exercise based upon the cash flow statement produced by the assessee. The finding in this regard is in paragraph 12. After going through the cash flow statement, the Tribunal expressed that the same is questionable. Further, the assessment seems to have been made on the basis of reworked notional balance sheet and statement of accounts prepared from the seized records. This factual finding also deters us from showing any indulgence to the assessee. Nevertheless, we examine as to whether the cause shown by the assessee was a reasonable cause. In support of such contention, Mr.A.S.Sriraman referred to the decisions in **Kailash Triple Sterlized Water (Chennai) (P) Ltd.** (supra); **Lakshmi Trust CO.** (supra); **Deccan Designs (India) (P.) Ltd.** (supra); **Balaji Traders** (supra); and **CIT vs. Ratna**

**Agencies, [2006] 284 ITR 609 (Madras).** Before we examine as to whether these decisions would apply to the assessee's case, we need to point out one crucial aspect.

33.The Hon'ble Supreme Court in **Kum. A.B. Shanthi**, (supra) while upholding the validity of Sections 269SS and 271D, held that if there was a genuine and *bona fide* transaction and if for any reason, the taxpayer could not get loan or deposit by account payee cheque or demand draft for some *bona fide* reasons, the authority vested with the power to impose penalty has got discretionary power. Therefore, the taxpayer has to show that he could not get a loan or deposit by account payee cheque/demand draft and the reason given by the taxpayer should be genuine and *bona fide*.

34.The assessee's plea of reasonable cause/genuinity is only based on the conduct of the Director in depositing the huge loans received in cash from Mr.J.D. into the bank account of the company on the very same day. To be entitled to the benefit under Section 273B, the onus is on the person claiming such benefit to show that he could not get a loan by account payee cheque or demand draft and the cause shown by him should be genuine and *bona fide*. Thus, merely because the Director took cash loans from the Financier, Mr.J.D., and deposited it

in the current account of the assessee-company on the very same day, can never be a ground to be taken as a mitigating factor to escape from the rigour of levy of penalty under Section 271D of the Act. Thus, the assessee has been under a thorough misconception. There is a bald statement made that Mr.J.D. will give loans only in cash, however much it may be. To be noted that the loans received by the Director and later by the company is more than Rs.90 Crores. The assessee is Private Limited Companies, not individual assessee, as was examined in several of the decisions cited by Mr.A.S.Sriraman.

35.In fact, one of the decisions, which was heavily relied on in the case of **T.Perumal (Indl.)** (supra), he was a labour supervisor and because of his sincere and dedicated work, he was awarded a labour contract. Since he had no resources to finance the construction, he resorted to avail loans from friends at the time of emergency, particularly, on Saturdays, when labour had to be paid their wages. Therefore, the decision in **T.Perumal (Indl.)** (supra) can be of no assistance to the case of the assessee. Apart from that, whether a person would be entitled to reprieve under Section 273B of the Act is a decision to be taken on a case to case basis.

36. In our considered view, there can be no straight jacket formula to examine the bona fides and genuinity of the plea raised by a person, who states that he was for certain *bona fide* reasons unable to get a loan or deposit by account payee cheque/demand draft. Therefore, precedence cannot always be the Rule and we need to examine the factual position. In the preceding paragraphs, we have held as to how the decisions in **Idhayam Publications Ltd.** (supra) and **T. Perumal (Indl.)** (supra) will not render any assistance to the assessee.

37. In **Kailash Triple Sterilized Water (Chennai) (P) Ltd.** (supra), the Revenue was not able to establish that the amount received by the assessee was loan or deposit within the meaning of Section 269SS, as on facts, it was found that it was a trade credit.

38. In **Lakshmi Trust CO.** (supra), one of the questions, which arose for consideration was whether the Tribunal was right in holding that penalty under Section 271D cannot be imposed for violation of Section 269SS, if there is no intention to evade tax and the transactions are genuine. The Division Bench held that, on facts, the CIT(A) and the Tribunal found the transactions to be genuine and the identity of the lenders was also satisfied and there was no intention on the part of the

assessee to evade tax. Thus, on facts, the Division Bench held that no substantial question of law arise for consideration.

39.In **Deccan Designs (India) (P.) Ltd.** (supra), the Division Bench approved the findings recorded by the CIT(A), since the assessee with a view to save its existence, had cash transactions with its sister concern mainly for the purpose of disbursing the salary to the employees. There was no contra material placed by the Revenue regarding the conduct of the assessee, therefore, the factual finding of the CIT(A) that there was reasonable cause, was affirmed.

40.In **Balaji Traders** (supra), the Division Bench affirmed the view taken by the CIT(A) and the Appellate Tribunal that the transactions satisfy the test of business exigency.

41.In the case of **M.Yesodha** (supra), the transaction was between the daughter-in-law and the father-in-law in cash and the transaction was held to be genuine owing to urgent necessity of money to be paid to the vendor. Thus, all the aforesaid decisions consider the factual aspect as recorded by the CIT(A) and the Tribunal and did not

disturb the factual finding wherever it was held to be reasonable and genuine. These decisions can render no assistance to the case of the assessee, as the first appellate authority and the Tribunal both held against the assessee and found no genuinity or *bona fide* in the claim of the assessee.

42. Thus, in our view, deposit of the cash by the Director received from Mr.J.D. into the bank account of the assessee on the same day and those amounts, being utilized for making several payments including salaries, apart from that the Director withdrawing money from the assessee's bank account and remitting to the Financier by cash can never be taken to be a *bona fide* transaction.

43. What is most disturbing is that it is not a solitary instance, as the same type of transactions have been carried on by the assessee and the Director from the assessment year 2012-13. Most of the cases, which were relied on by the assessee are of either individual or rare transactions of the assessee. Therefore, we are of the clear view that there is absolutely no genuinity or bonafideness in the transaction done by the assessee and it will not amount to reasonable cause for the purpose of exercise or discretion by the Assessing Officer under Section

273B of the Act.

44. With regard to alternate plea raised by Mr.A.S.Sriraman stating that the penalty should be restricted to the peak of the cash deposits, we find that such a plea did not find favour with the Tribunal and in the light of the reasons assigned by us in the preceding paragraphs, we reject such a plea raised by the assessee.

45. The Tribunal while considering the correctness of levy of penalty under Section 271E of the Act found that it has been admitted that cash has been deposited into the bank account of the assessee, the funds having been routed through the bank accounts, why the same was withdrawn in cash for repayment to the Director and subsequently, to Mr.J.D. This transaction remained unexplained. Further, the Tribunal pointed out that perusal of the assessment order of the Financier, Mr.J.D., gives a picture that moneys were the unaccounted cash of Mr.J.D., and this cash was laundered through the accounts of the two assesseees herein. Thus, the Tribunal concluded that the assesseees have been used as custodian of the unaccounted cash of Mr.J.D. by depositing it in the bank accounts of the assessee by their Director, Dr.A.M.

Further, the assessee was not able to give any explanation to substantiate with evidence for repayment of the deposits to Dr.A.M., Director in cash. Examining the transaction, the Tribunal noted that as and when Mr.J.D. required cash, which appears to have been withdrawn by Dr.A.M., Director from the bank accounts of the assessee and paid to Mr.J.D. Thus, after considering all the factual aspects, the Tribunal confirmed the levy of penalty under Section 271E of the Act. The assessee has not been able to convince us to take a different view.

46. The Revenue placed reliance on the decision in **M.Sougoumarin** (supra), which is sought to be distinguished by the assessee by contending that the transactions were never accounted for. This objection raised by Mr.A.S.Sriraman is by highlighting the conduct of the Director, Mr.A.M. in depositing the entire cash loan received by him in the assessee's bank account. We fail to understand as to how this conduct of the assessee can be taken into consideration to put them in a different pedestal than on which M.Sougoumarin was placed. In the said decision, the Division Bench noted that if loan in cash is taken once or twice, in exceptional exigencies, may be a ground for interference, but when the fact remains that a lender not even licensed was illegally giving loans only in cash and accepting repayment in cash

cannot be a ground for condonation of regular transaction with such unauthorised lender. Therefore, we find the findings and observations in **M.Sougoumarin** (supra) to aid the case of the Revenue.

47.Thus, for the above reasons, we find that the assesseees have not made out any case for interference with the order passed by the Tribunal. In the result, the appeals are dismissed and the substantial questions of law are answered against the assessee. No costs. Consequently, the connected miscellaneous petitions are closed.

(T.S.S., J.) (N.S.K., J.)

05.02.2019

Index : Yes / No

Speaking / Non-Speaking Order

abr/maya

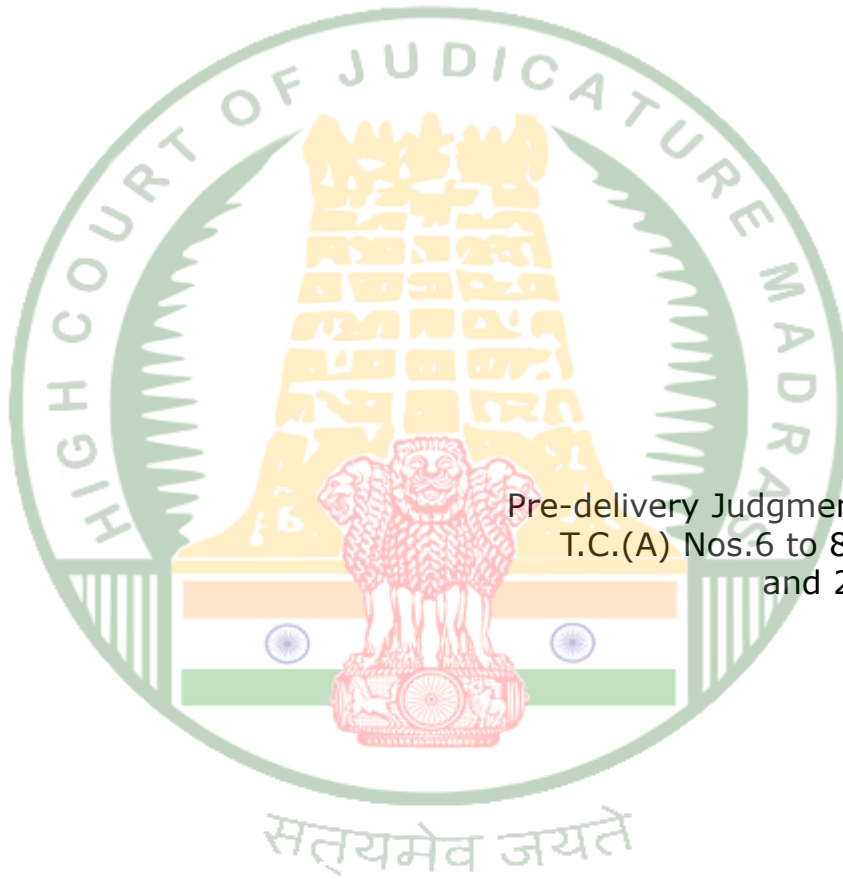
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To

The Income Tax Appellate Tribunal, "D" Bench, Chennai.

T.S.Sivagnanam, J.  
and  
N.Sathish Kumar, J.

(abr)



Pre-delivery Judgment made in  
T.C.(A) Nos.6 to 8, 12 to 19  
and 21 of 2019

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