

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. G. C. Gupta, Vice President And Sh. N. K. Saini, AM

ITA No. 4410/Del/2013 : Asstt. Year : 2007-08

Deputy Commissioner of Income Tax, Central Circle-03, New Delhi	Vs	M/s Mahagun Technologies Pvt. Ltd., B-66, Vivek Vihar, Delhi-110095
(APPELLANT)		(RESPONDENT)
PAN No. AACCB3143L		

Assessee by : Sh. Rakesh Gupta, Adv.

Revenue by : Sh. P. Dam Kanunjna, Sr. DR

Date of Hearing : 24.03.2015

Date of Pronouncement : 22.06.2015

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 22.04.2013 of Id. CIT(A)-IV, New Delhi.

2. The only ground raised in this appeal reads as under:

“1. That the Ld. Commissioner of Income Tax(Appeals) erred in law and on facts of the case in deleting the penalty imposed u/s 271D of Rs. 53,53,316/-.

3. Facts of the case in brief are that the assessee filed its return of income on 03.07.2009 declaring an income of Rs. 10,560/- and the assessment was completed u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) at Rs. 58,13,876/-. The AO

noted that as per the accounts of M/s Mahagun Developers Ltd. in the books of the assessee an amount of Rs. 50,05,316/- was transferred which included air conditioners worth Rs. 19,68,769/- and building work in progress amounting to Rs. 30,36,547/-. He also noted that a sum of Rs. 3,48,000/- had been paid as lease rent on 28.06.2006 on behalf of the assessee. The AO issued a show cause notice to the assessee to explain as to why penalty u/s 271D of the Act should not be imposed on the aforesaid transactions. The assessee submitted that there was no acceptance of any loans/advances in cash as required u/s 271D of the Act and the adjustments between the associate company was made by passing necessary journal entries. However, the AO was not satisfied with the submissions of the assessee and levied the penalty of Rs. 53,53,316/- u/s 271D of the Act.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and made the written submissions which is incorporated in para 5.1 of the impugned order, for the cost of repetition, the same are not reproduced herein.

5. The Id. CIT(A) after considering the submissions of the assessee observed that there was a relationship of landlord and tenant between the assessee and M/s Mahagun Developers Ltd. He further observed that there was no cash loan/deposit taken by the assessee from M/s Mahagun Developers Ltd. and that the journal entries were made in the books of

accounts of the assessee in order to acknowledge the debt incurred in connection with renovation of the building and other expenses by the tenant and value of air conditioners transferred. Therefore, there was no violation of the provisions of section 269SS of the Act and accordingly penalty levied by the AO u/s 271D of the Act was deleted.

6. Now the department is in appeal. The ld. DR supported the order of the AO but could not controvert the findings given by the ld. CIT(A). In his rival submissions the ld. Counsel for the assessee reiterated the submission made before the authorities below and further submitted that there was no receipt of loan or deposit in cash and only journal entries were passed. Therefore, the ld. CIT(A) was fully justified in deleting the penalty levied by the AO u/s 271D of the Act. The reliance was placed on the judgment of the Honøble Jurisdictional High Court in the case of CIT Vs Worldwide Township Projects Ltd. (2014) 106 DTR (Del) 139.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee did not receive any loan or deposit from M/s Mahagun Developers Ltd. The amount was credited in the account of the said company on account of lease rent, value of air conditioners and building work in progress, those entries were in the form of adjustment between the assessee and the associate company but no cash was involved. On a similar issue the Honøble

Jurisdictional High Court in the case of CIT Vs Worldwide Township Projects Ltd. (supra) held as under:

“Section 269SS indicates that it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the Section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debit or a liability arises on account of book entries. The object of the Section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to Section 269SS of the Act which defines loan or deposit to mean “loan or deposit of money”. The liability recorded in the books of accounts by way of journal entries, i.e. crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of Section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels. M/s PACL India Ltd. made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s PACL India Ltd. In view of this admitted position, no infringement of Section 269SS of the Act is made out. CIT Vs Noida Toll Bridge Co. Ltd. : 262 ITR 260, relied on.”

8. In the present case also the account of the associate concern M/s Mahagun Developers Ltd. was credited by the assessee by passing a journal entry and it did not involve acceptance of any loan or deposit or money. Therefore, the provisions of Section 269SS of the Act were not

applicable and the penalty levied by the AO u/s 271D of the Act was rightly deleted by the Id. CIT(A). We do not see any infirmity in the order of the Id. CIT(A) on this issue.

9. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 22/06/2015)

Sd/-
(G. C. Gupta)
VICE PRESIDENT

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 22/06/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR