IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos.2253/Del/2013 & 2259/Del/2013
Assessment Year : 2007-08

Assistant Commissioner of Income Tax, Circle-33(1), New Delhi.	Vs.	M/s Vardaan Fashion, E-1/7, 2nd Floor, East Patel Nagar, New Delhi – 110 008. PAN : AACFV0423H.
(Appellant)		(Respondent)

ITA Nos.2252/Del/2013, 2258/Del/2013, 3084/Del/2013 & 3085/Del/2013
Assessment Years : 2007-08, 2008-09, 2008-09 & 2008-09

Assistant Commissioner of Income Tax, Circle-33(1), New Delhi.	Vs.	Shri Inderpal Singh Wadhawan, E-1/7, 2nd Floor, East Patel Nagar, New Delhi – 110 008. PAN : AARPS6904L.
(Appellant)		(Respondent)

Appellant by	:	Shri R.I.S. Gill, CIT-DR and Shri B.R.R. Kumar, Sr.DR.
Respondents by	:	Shri Ajay Wadhwa, Advocate.

ORDER

PER G.D. AGRAWAL, VP :

ITA No.3085/Del/2013 :-

This appeal by the Revenue is directed against the order of learned CIT(A)-XXVI, New Delhi dated 13th February, 2013 for the AY 2008-09.

2. The only ground raised by the Revenue in this appeal reads as under:-

> *"The CIT(A) has erred in deleting the penalty of Rs.5,85,70,875/- levied by the AO u/s 271D for violation of provisions of section 269SS of the I.T. Act 1961."*

3. The facts of the case are that the assessee is an individual and during the course of assessment proceedings under Section 143(3), the Assessing Officer noticed that the assessee had accepted loan or deposit amounting to ₹5,85,70,875/- otherwise than account payee cheque or account payee draft. The details of such loan accepted otherwise than account payee cheque/bank draft are as under:-

Name of the lender	Date of entry	Amount of loan or deposit taken or accepted otherwise than by an account payee cheques or an account payee bank draft
GMS Real Estate (P) Ltd.	4/2/2008	190000
Godsons Shoes	4/2/2008	970000
Godsons Bros.	4/2/2008	3900000
M.S. Appreal Pvt.Ltd.	1/4/2007	4000000
Vardaan Fashion	14/11/2007	250000
Vardaan Fashion	19/11/2007	612175
Vardaan Fashion	18/3/2008	612175
Vardaan Fashion	18/1/2008	612175
Vardaan Fashion	18/2/2008	612175
Vardaan Fashion	1/2/2008	2100000
Vardaan Fashion	1/2/2008	140000
Vardaan Fashion	7/12/2007	3000000
Vardaan Fashion	2/2/2008	1300000
Vardaan Fashion	1/2/2008	10000000
Vardaan Fashion	15/3/2008	27050000
Total		58570875

4. During penalty proceedings, it was explained by the learned counsel that all the above credit entries in the assessee's books of account are only by journal entry and no monetary transaction had actually taken place between the assessee and the above mentioned lenders. Since the assessee's explanation with regard to each and every lender is more or less similar, it would be appropriate to reproduce the assessee's explanation with regard to the credit entry in the name of GMS Real Estate (P) Ltd. (hereinafter referred to as GMS):-

> *"(i) The assessee is a partner of M/s DNK. M/s DNK received/paid cheque from/to GMS Real Estate time to time on behalf of the assessee for the advance for property. On 4/2/2008 the net amount from G M Real Estate transferred to Inderpal Singh account. Thus, the assessee has not received any loan/advance otherwise than by account payee cheque/account payee bank order. It would not be out of place to mention that all the payments were received through account payee cheques only from GM Real Estate. A partnership firm can receive payment on the behalf of the partner. M/s DNK received the advance for property on the behalf of the assessee, which is not contradictory to the provision of section 269SS read with section 271D of the Income Tax Act, 1961. Copy of ledger account of GMS Real Estate (P) Ltd. and DNK in the books of the assessee and ledger account of GMS Real Estate & Inderpal Singh in the books of the M/s DNK are enclosed herewith as Annexure-"B"."*

5. The Assessing Officer did not accept the assessee's contention with the following finding:-

> *"The contentions of the assessee have been examined. The loan has been taken by the assessee which is quite clear from the ledger account of GMS Real Estate in the books of the assessee Inderpal Singh wherein GMS Real Estate account has been credited dated 4.2.2008 by Rs.1,90,000/-. It is not the case of the assessee that the*

assessee has taken loan from GMS Real Estate by account payee cheque or account payee bank draft drawn in the name of the assessee. That makes it clear that he has taken loan from GMS Real Estate otherwise than by an account payee cheque or account payee bank draft drawn in the name of the assessee. Now in the facts of the case it is clear that the assessee has taken loan from GMS Real Estate otherwise than by an account payee cheque or account payee bank draft drawn in the name of the assessee and is using artifice to camouflage this transaction. This camouflaging transaction is merely a colourable device to hide the original transaction which is quite clear from the ledger account of GMS Real Estate in the books of the assessee Inderpal Singh wherein GMS Real Estate's account has been credited dated 4.2.2008 by Rs.1,90,000/-. Thus it is quite clear that the assessee's contention has no force in it."

6. Accordingly, the Assessing Officer levied the penalty of ₹5,85,70,875/- which is deleted by the learned CIT(A). Hence, this appeal by the Revenue.

7. At the time of hearing before us, it is stated by the learned DR that there is no dispute that there is a credit entry in the assessee's books of account in the name of above mentioned persons. As per Section 269SS, the assessee is supposed to accept loan or deposit either by account payee cheque or by account payee bank draft. Admittedly, the above credit entries by the assessee were accepted neither by account payee cheque nor by bank draft and therefore, there is clear violation of Section 269SS and Assessing Officer rightly levied penalty under Section 271D. The CIT(A) cancelled the penalty without properly appreciating the facts. Therefore, his order should be reversed and that of the Assessing Officer may be restored.

8. Learned counsel for the assessee, on the other hand, stated that the assessee is a partnership of M/s DNK. M/s DNK received/paid cheques from/to GMS from time to time on behalf of the assessee for advance for property. In the assessee's books of account, a journal entry is passed in respect of net amount of ₹1,90,000/- by which the account of GMS was credited and the account of M/s DNK was debited. There was no monetary transaction between the assessee and GMS. The monetary transaction was only between M/s DNK and GMS from time to time and all those transactions were by account payee cheques. When there was no monetary transaction between M/s DNK and GMS, the question of accepting the money by account payee cheque/bank draft did not arise. He further submitted that this issue has been considered by various Courts and the Tribunal and they have taken the unanimous view that provisions of Section 269SS cannot be said to have been violated in the case of book entry. In support of his contention, he relied upon the following decisions:-

(i) CIT Vs. Worldwide Township Projects Ltd. – [2014] 367 ITR 433 (Delhi).

(ii) CIT Vs. National Clothing Co. – ITA No.221/2003 vide order dated 12th December, 2014, Hon'ble Delhi High Court.

(iii) CIT Vs. Noida Toll Bridge Co.Ltd. – [2003] 262 ITR 260.

(iv) Sunflower Builders (P) Ltd. Vs. DCIT – [1997] 61 ITD 227 (ITAT-Pune Bench).

(v) ACIT Vs. Ruchika Chemicals & Investment (P) Ltd. – [2004] 88 TTJ 85 (ITAT-Delhi Bench).

(vi) ACIT Vs. Gujarat Ambuja Proteins Ltd. – [2004] 89 TTJ 324 (ITAT-Ahmedabad Bench).

9. We have carefully considered the submissions of both the sides and perused relevant material placed before us. Admittedly, in the case of the assessee, for the year under consideration, in respect of all the credit entries amounting to ₹5,85,70,875/-, the credit was by way of journal entries and not on account of receipt of any cash money by the assessee from the lenders. So far as credit in the account of GMS is concerned, M/s DNK, which is a partnership firm in which assessee is a partner, received/paid cheque from GMS time to time on behalf of the assessee. In respect of the net amount, a journal entry was passed by crediting to GMS and debiting to M/s DNK. Similarly, M/s DNK also received cheque from Godsons Shoes on behalf of the assessee and then by way of journal entry in the assessee's books of account. Godsons Shoes was credited with debit to M/s DNK. In the case of Godsons Bros., there was a transaction by cheque between Vardaan Fashion, a partnership firm in which assessee is a partner and Godsons Bros. and in the books of the assessee, there was only a journal entry. In the case of M.S. Appreal Pvt.Ltd., the journal entry was passed only as a rectification entry. These facts were duly stated before the Assessing Officer during penalty proceedings and the assessee's submission which is reproduced by the Assessing Officer in the penalty order is reproduced below for ready reference:-

> *"(v) The assessee has wrongly credited the cheque received from M.S. Appreal Pvt.Ltd. in the ledger of Mr. Manjinder Singh, who is a director of M.S. Appreal Pvt.Ltd. dated 16/1/2007. When mistake became known a rectification entry has been made in the year under consideration. The assessee has not received loan/advance amounting to Rs.40,00,000/- from M.S. Appreal Pvt.Ltd. during the financial year 2007-08. All loan/advances amounts were received through account payee cheque only. The assessee has wrongly by mistake reduced the loan/advance amount of G.S. Batra during the financial year 2006-07 by wrongly entering a*

cheque received from M.S. Appreal Pvt.Ltd. copy of ledger account of M.S. Appreal Pvt.Ltd. and Sh. Majinder Singh in the books of assessee an ledger account of the Shri Mahinder Singh for the financial year 2006-07 in the books of the assessee are enclosed herewith as Annexure-"F"."

10. Similar is the position for credit in the name of Vardaan Fashion. M/s Vardaan Fashion is the partnership firm in which assessee is a partner. M/s Vardaan Fashion made payment on behalf of the assessee to others by account payee cheques and in the books of the assessee, only the journal entry is passed crediting the account of M/s Vardaan Fashion and debiting the account of the person to whom the payment is made by M/s Vardaan Fashion. The Revenue has also not disputed that all the above credit entries are by way of journal entries but their contention is that as per Section 269SS, assessee is supposed to accept loan or deposit by account payee cheque or account payee bank draft. Since there is a credit entry in the assessee's books of account which is neither by account payee cheque nor by bank draft, therefore, there was violation of Section 269SS and consequently, the penalty is leviable under Section 271D. We are unable to accept this contention of the Revenue. Section 269SS and explanations thereto read as under:-

"[Mode of taking or accepting certain loans and deposits.

269SS. 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 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 :

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by, -

(a) Government;
(b) any banking company, post office savings bank or co-operative bank;
(c) any corporation established by a Central, State or Provincial Act;
(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette :

[Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.]

Explanation. – For the purposes of this section, -

[(i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;]

> *(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);*
>
> *(iii) "loan or deposit" means loan or deposit of money.]."*

11. As per Section 269SS, no person is supposed to take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft. The term 'loan or deposit' has also been defined by way of explanation by which loan or deposit means "**loan or deposit of money**". Thus, for the purpose of Section 269SS, loan or deposit of money only is to be considered. Now, in the case of all the credit entries in the accounts of the assessee which are considered for levy of penalty under Section 271D, we find that there is no monetary transaction between the assessee and the creditors. The monetary transaction had taken place between the creditors and some third party which were all by account payee cheques. In the books of the assessee, there is only a journal entry by debiting the account of some other party and crediting to the account of the creditor. In these circumstances, in our opinion, when there is no monetary transaction between the assessee and creditor, it cannot be said that assessee accepted loan or deposit from the creditor in violation of Section 269SS.

12. We also find that Hon'ble Jurisdictional High Court has considered this issue in the case of Noida Toll Bridge Co.Ltd. (supra) and held as under:-

> *"Where the Tribunal had noticed that (i) the transaction was by an account payee cheque, (ii) no payment on account was made in cash either by the assessee or on its behalf, (iii) no loan was accepted by the assessee in*

cash, and (iv) the payment of Rs.4.85 crores was made by the assessee through ILFS, which held more than 30 per cent, of the paid-up capital of the assessee, by journal entry in the books of account of the assessee by crediting the account of ILFS :

Held, that the provisions of section 269SS of the Income-tax Act, 1961, were not attracted and penalty could not be imposed."

13. In the case of Worldwide Township Projects Ltd. (supra), Hon'ble Jurisdictional High Court held as under:-

"A plain reading of section 269SS of the Income-tax Act, 1961, indicates that the import of the provisions is limited. 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 a transaction involving acceptance of money and not intended to affect cases where a debt 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 account 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 moneys are receivable in the books of account, is clearly outside the ambit of the provisions of section 269SS of the Act because passing such entries does not involve acceptance of any loan or deposit of money."

14. In the case of National Clothing Co. (supra), Hon'ble Jurisdictional High Court reiterated the same view and held as under:-

"The issue in question is covered by decision of this Court dated 20.11.2014 in ITA No.33/2002 titled Commissioner of Income Tax vs. M/s Ruchika Commercials and Investment Pvt.Ltd. This decision follows two earlier decisions of this Court in Commissioner of Income Tax vs. Noida Toll Bridge Co.Ltd. [2003] 262 ITR 260 (Delhi) and Commissioner of

Income Tax-VI vs. Worldwide Townships Project Ltd. [2014] 367 ITR 433 (Delhi). In the said decisions, in view of the language of Explanation to Section 269SS, it has been held that the provision would apply to loan or deposit of money, and not mere formal entries resulting in debit or credit. Other reasons and grounds have been elucidated."

15. Thus, Hon'ble Jurisdictional High Court has consistently held that Section 269SS is not applicable in the case of credit by way of journal entry or book entry. We, therefore, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that the learned CIT(A) was fully justified in cancelling the penalty levied under Section 271D of the Act. His order is upheld and Revenue's appeal is dismissed.

ITA No.2258/Del/2013 :-

16. The only ground raised in this appeal by the Revenue reads as under:-

"The CIT(A) has erred in deleting the penalty of Rs.3,26,97,283/- made by the AO u/s 271E for violation of provisions of section 269T of the I.T. Act 1961."

17. The Assessing Officer had levied the penalty under Section 271E in respect of following payments made by the assessee :-

Name of lender	Date of entry	Amount of loan or deposit repaid otherwise than by an account payee cheque or an account payee draft	Remarks
Bharat Seeds Pvt Ltd.	10.8.2006	25,00,000	Amount paid from Vardaan Fashion and transfer entry

			made
Manleen Trading Co.	8.9.2006	12,50,000	Journal entry from Majinder Singh
Satvinder Singh	1.4.2006	3,95,283	Journal entry passed and credit in DLF property account
Satvinder Singh	19.12.2006	49,00,000	Non account payee PO 738698 (against Ch.no. 603714)
God Sons Sales	23.3.2007	23,72,000	Journal entry passed and credit in DNK account
Simran Singh	23.5.2006	5,00,000	Non account payee PO 915109 from PNB
Arun Textiles	15.12.2006	30,00,000	Non account payee PO 738462 from PNB
Arun Textiles	6.3.2007	70,00,000	Non account payee PO
God Sons Brothers	8.3.2007	70,00,000	Non account payee PO 740615 from PNB
Shree Hanuman Enterprises	16.12.2006	37,80,000	Non account payee PO 738613
		3,26,97,283	

18. The penalty levied has been cancelled by the learned CIT(A). Hence, this appeal by the Revenue.

19. We have heard the arguments of both the sides and perused relevant material placed before us. So far as the debit in the books of account of the assessee through book entry is concerned, our discussion in paragraph Nos.10 to 15 above would be applicable and for the detailed discussion therein, we hold that when there is no monetary transaction between the assessee and the person whose account is credited and there is only journal entry, it cannot be said that there is violation of Section 269T.

20. So far as the payments by pay orders is concerned, we find that the CIT(A) deleted the penalty in respect of payment through pay orders with the following finding:-

> *"6. Penalty of Rs.1,91,80,000/- on repayment through pay orders*
> *(i) That in respect of penalty of Rs.1,91,80,000/-, the appellant in the written submission dated 25.11.2011 Page 13 has explained that the payments were made through pay order/bank draft in which the name of the payers were mentioned and against each name the word ONLY, were written. It means, the pay order was not transferable/negotiable and such pay orders issued to the parties were account payee only.*
>
> *(ii) That a certificate dated 10.06.2010 issued by the PNB, Punjabi Bagh, New Delhi was enclosed as Annexure-3 of the written submission. On going through the certificate, your goodself will appreciate that the Bank has confirmed that the impugned pay orders were neither negotiable nor transferable by writing the word 'ONLY' and the payments were made in the a/c of the payees only. The banker has also certified that the payment has gone to the account of the respective payees.*
>
> *(iii) That in the remand report, Page 14-15 the ld.AO has reported – "The letter dated 10.06.2010 from Punjab National Bank does not anywhere say that re-payment of loan exceeding twenty thousand rupees has not been made otherwise than by account payee cheque or account payee draft and accordingly, the assessee's contention are entirely bereft of force". As is clear from the above, the ld.AO has made no comments on the account payee pay orders but has only stated that they are not account payee cheques or account payee drafts. His report is baseless without having any evidence.*
>
> *(iv) That the account payee pay orders that have been issued by the appellant serve the same purpose as an account payee cheque or account payee draft. The appellant has made the payment to the suppliers*

through pay orders in which the names of the payees were mentioned by writing the word ONLY against the name of the each payee. It means, the pay orders were not transferable/negotiable and such pay orders issued to the suppliers were in the nature of account payee only.

(v) That in respect of ld.AO's above report, it is brought to your kind notice that since the payments were made to local parties, the pay orders were obtained and the bank has mentioned the word "ONLY" on such pay orders. The issuing bank of the pay orders, i.e. Punjab National Bank vide certificate dated 10.06.2010 has certified that the payment was supposed to be made in the bank account of the payee by writing the word "ONLY". The objective of the account payee cheque/bank draft is to credit the amount in the account of the payee and not to encash the same on the counter. The pay order being banker's cheque issued by the bank by writing the word "ONLY" is equivalent to account payee cheque/account payee bank draft. Hence, in the case of appellant there is no violation of any provision of Section 271E of the IT Act, 1961.

(vi) That the appellant's contention is supported by the decision of the Hon'ble ITAT, Bench A, Lucknow in the case of M/s Devlok Hatcheries vs. The ITO 1(1), ITA No.544(LKW) 2010. The copy of the case law is enclosed as Annexure-2. The relevant portion of the decision is reproduced below:

"Ground No.2 of the appeal reads as under : "2. That the learned Lower Court erred in facts and legal aspects of the case in treating amount of Rs.27,674 paid by Account payee pay order (which is bankers cheque) as cash and disallowing 20% of the same u/s 40A(3)."

The assessee is engaged in the business of buying day old chicks, growing them and then producing the chicks. During the course of assessment proceedings, the AO found that the assessee made payment of Rs.27,674 on 27.10.2004 (pay order) otherwise than account payee cheque/draft to M/s Ram Saran Rakesh Saran. In response to the query, the assessee submitted that no

cash payment has been made to party for Rs.27,674. The AO, therefore disallowed 20% of the same under Section 40A(3) of the Income-tax Act, 1961 (in short 'the Act'). On appeal, the ld.CIT(A) confirmed the addition.

We have heard the rival submissions. Shri Prakash Narain, Advocate and Shri S.D. Seth, Advocate, ld. counsels for the assessee submitted that payment made to M/s Ram Saran Rakesh Kumar, as the AO has himself stated, was made by pay order. Shri Prakash Narain, Advocate and Shri S.D. Seth, Advocate, ld.Counsels for the assessee submitted that the authorities below have failed to understand the fact that pay order is a banker cheque and is account payee only and provisions of Section 40A(3) do not apply to payment by pay order.

In view of the above submissions of Shri Prakash Narain, Advocate and Shri S.D. Seth, Advocate, ld. counsels for the assessee, we allow ground No.2 of the appeal."

(vii) That the finding of the ld. ITAT, Lucknow in the aforesaid case is applicable in the appellant's case being similar facts and circumstances of the case. Hence, your goodself is requested to kindly delete the penalty of Rs.1,91,80,000/- which is wrongly levied under Section 271E of the IT Act, 1961."

21. After considering the arguments of both the sides and the facts of the case, we do not find any infirmity in the above finding of the learned CIT(A). The assessee had claimed before the CIT(A) that on all the pay orders, after the name of the payee, the word 'only' has been used and therefore, the said pay orders were neither negotiable nor transferable. In support of his contention, the certificate dated 10th June, 2010 issued by Punjab National Bank was filed. The CIT(A) called the remand report of the Assessing Officer in which Assessing Officer reiterated their earlier stand i.e. the payment was not by account payee cheque or account payee draft. The CIT(A) rejected the

objection of the Assessing Officer on the ground that the pay order is nothing but bankers cheque and when in the pay order after the name of the payee, the word 'only' is used, then the pay order becomes equivalent to account payee cheque which is payable to the person named in the pay order and not to any other person. The bank in the said certificate has also confirmed that the payments were actually made to the account of the payees only. The CIT(A) has also relied upon the decision of ITAT, Lucknow Bench in the case of M/s Devlok Hatcheries vide ITA No.544/Lkw/2010. In the said case, the ITAT was considering the applicability of Section 40A(3) wherein certain expenditure if paid otherwise than by account payee cheque or account pay bank draft is to be disallowed. The ITAT held that the pay order is a bankers cheque and when in the pay order, 'only' is mentioned, the provisions of Section 40A(3) do not apply to payment by such pay order. In our opinion, the ratio of the above decision would be squarely applicable in respect of levy of penalty under Section 271E also and learned CIT(A), rightly applying the above decision, deleted the penalty. In view of above facts and the decision of the ITAT, Lucknow Bench, we do not find any infirmity in the order of learned CIT(A). The same is upheld and Revenue's appeal is dismissed.

ITA No.2253/Del/2013 :-

22. In this appeal by the Revenue, following grounds have been raised:-

> *"1. The CIT(A) has erred in deleting the penalty of Rs.2,45,59,221/- levied by the AO u/s 271D for violation of provision of Section 269SS of the I.T. Act 1961.*
>
> *2. The CIT(A) has erred in holding that partner and partnership firm are not different from each other and*

the provisions of section 269SS cannot be made applicable between the transaction of the partner and the firm.

3. The CIT(A) has erred in admitting additional evidences under Rule 46A which were not produced before the AO despite providing two opportunities."

23. The facts of the case are that the assessee is a partnership firm. The Assessing Officer had levied the penalty of ₹2,45,59,221/- for accepting loan or deposit otherwise than through account payee cheque or account payee bank draft. The details of loan or deposit taken or accepted otherwise than by account payee cheque or account payee bank draft are as under:-

Name of lender	Date of entry	Amount of loan or deposit taken or accepted otherwise than by an account payee cheque or an account payee draft	Remarks
Shree Hanuman Enterprises	06/04/2006	5,00,000/-	Recd in Inderpal Singh account and journal entry passed
Rups Craft Inc	04/11/2006	4,50,000/-	Recd in Inderpal Singh account and journal entry passed
Rups Craft Inc	25/11/2006	24,80,000/-	Non account payee PO 738076
Rups Craft Inc	29/11/2006	45,00,000/-	Non account payee PO 738234
Kartik agencies	29/09/2006	20,00,000/-	Non account payee PO 919194
Kartik agencies	14/10/2006	19,95,000/-	Non account payee PO 918964
Inder Pal Singh	04/04/2006	10,00,000/-	Journal entry as cheque received from DNK

			Creation
Inder Pal Singh	16/05/2006	15,00,000/-	Journal entry as cheque received from Wadhawan Designs
Inder Pal Singh	06/06/2006	3,00,000/-	Cash
Inder Pal Singh	18/09/2006	3,54,221/-	PO 724690
Inder Pal Singh	05/10/2006	15,00,000/-	PO 919286
Inder Pal Singh	18/10/2006	4,00,000/-	Cash
Inder Pal Singh	19/10/2006	4,00,000/-	Cash
Inder Pal Singh	11/11/2006	24,80,000/-	PO
Inder Pal Singh	11/12/2006	30,00,000/-	PO 738528
Inder Pal Singh	21/01/2007	5,00,000/-	Cash
Inder Pal Singh	23/01/2007	5,00,000/-	Cash
Inder Pal Singh	09/03/2007	7,00,000/-	Cash
Total		2,45,59,221/-	

24. Learned CIT(A) cancelled the penalty. Hence, this appeal by the Revenue.

25. We have heard the arguments of both the sides and perused relevant material placed before us. After going through the arguments of both the sides and perusal of the order of authorities below, we find that the credit entries in the books of account can be divided in three categories :-

(i) Where there is a credit by way of journal entry (book entry).

(ii) Where there is a credit on account of receipt of pay order.

(iii) Credit by way of cash receipt.

26. So far as the credit by way of journal entry is concerned, this issue has been discussed by us in detail while considering the penalty

in the case of Shri Inderpal Singh Wadhawan. For the detailed discussion in paragraph Nos.10 to 15 above, we are of the opinion that on account of credit by journal entry (book entry), there is no violation of Section 269SS and therefore, penalty under Section 271D is not leviable.

27. So far as the credit by way of pay orders is concerned, this issue has also been discussed by us while considering penalty in the case of Shri Inderpal Singh Wadhawan. At the time of hearing before us, it was admitted by the parties that the facts in the case of the assessee are identical to the facts in the case of Shri Inderpal Singh Wadhawan. Therefore, our finding in this regard in the case of Shri Inderpal Singh Wadhawan vide paragraph Nos.20 and 21 above would be squarely applicable and for the detailed discussion therein, we find no infirmity in the order of learned CIT(A) wherein he cancelled the penalty under Section 271D levied in respect of credit by way of receipt of pay orders.

28. So far as the receipt by way of cash is concerned, it was argued by the learned counsel that the assessee M/s Vardaan Fashion is a partnership firm and Shri Inderpal Singh Wadhawan is the partner of the assessee firm. There was a cash transaction of receipt of money as well as payment between the partnership firm and Shri Inderpal Singh Wadhawan. Money was credited as well as debited to his capital account. Thus, the receipt of money from Shri Inderpal Singh Wadhawan was not by way of loan or advance but it was a capital contribution. Therefore, it was not in the nature of loan and advance. He further stated that the firm is not a legal person though for the purpose of income tax, it has been considered as a separate assessee. But, the receipt of money from the partners cannot be said to be loan

by the partner to the firm. In support of his contention, he relied upon the following decisions:-

(i) CIT, Madras Vs. R.M. Chidambaram Pillai, Etc. – [1977] 106 ITR 292 (SC).

(ii) CIT Vs. Lokhpat Film Exchange (Cinema) – [2008] 304 ITR 172 (Raj).

(iii) Shrepak Enterprises Vs. DCIT – [1998] 60 TTJ (Ahd) 199.

29. Learned DR, on the other hand, relied upon the order of the Assessing Officer and stated that for the purpose of income tax, firm and partner are separate assessable units and therefore, acceptance of money by the partnership firm from the partner is in the nature of loan and advance by the partner to the firm.

30. We have carefully considered the submissions of both the sides and perused relevant material placed before us. We find that Hon'ble Apex Court has considered the nature of partnership firm as well as partners under the general law as well as under the Income-tax Act in the case of R.M. Chidambaram Pillai (supra). In the above case, the partnership firm claimed the deduction of salary paid to the partner and in that context, their Lordships considered the relationship between the firm and the partners under the general law vis-a-vis under the Income-tax Act. The relevant observations of their Lordships at page 295 of 106 ITR read as under:-

> *"Here the first thing that we must grasp is that a firm is not a legal person even though it has some attributes of personality. Partnership is a certain relation between*

persons, the product of agreement to share the profits of a business. "Firm" is a collective noun, a compendious expression to designate an entity, not a person. In income-tax law a firm is a unit of assessment, by special provisions, but is not a full person which leads to the next step that since a contract of employment requires two distinct persons, viz., the employer and the employee, there cannot be a contract of service, in strict law, between a firm and one of its partners."

31. Similar observations were made at page 299 which read as under:-

"The necessary inference from the premise that a partnership is only a collective of separate persons and not a legal person in itself lends to the further conclusion that the salary stipulated to be paid to a partner from the firm is in reality a mode of division of the firm's profits, no person being his own servant in law since a contract of service postulates two different persons."

32. Thus, their Lordships of the Apex Court clearly held that the partnership firm is only a collective name of separate persons and not a legal person in itself and therefore, a partner cannot be a servant of the firm because no person can be his own servant in law. The ratio of the above decision would be squarely applicable in the case under appeal before us. Similar to the contract for employment where two distinct persons employee and employer are required, for the purpose of giving and acceptance of loan or deposit also, two different persons are required – (i) the lender and (ii) the debtor i.e. the borrower. As per Hon'ble Apex Court, firm and partner are not two different persons, therefore, credit in the books of firm in the account of partner, it cannot be said that firm has taken loan or deposit from partner. Admittedly, in the assessee's books of account, the amount has been

credited in the capital account of Shri Inderpal Singh Wadhawan. The firm and partners have also treated the transaction as of contribution of capital from the partner to the firm and not as a loan by an individual to the partnership firm.

33. That Hon'ble Rajasthan High Court in the case of Lokhpat Film Exchange (Cinema) (supra) has considered the issue of levy of penalty under Section 271D and 271E in respect of cash transactions between the firm and the partners, and their Lordships held as under:-

> *"Held, dismissing the appeals, that the assessee had acted bona fide and its plea that inter se transactions between the partners and the firm were not governed by the provisions of sections 269SS and 269T was a reasonable explanation. Penalty could not be imposed."*

34. The ITAT, Ahmedabad Bench in the case of Shrepak Enterprises (supra) held as under:-

> *"Therefore, the payment of the amount made by a partner to a firm is the payment itself to self and does not partake the character of loan or deposit in general law. Therefore, the provisions of s. 269SS are not applicable to the facts of the case, and no penalty is imposable under s. 271D. The assessee could be under genuine impression that advancing of loan by a partner to firm is not a transfer from one person to the another and hence, there is no violation of provisions of s. 269SS. In view of the above, the penalty is cancelled."*

35. The ratio of the above decision of ITAT, Ahmedabad Bench, Hon'ble Rajasthan High Court and Hon'ble Apex Court would be squarely applicable to the case under appeal before us. Respectfully following the same, we hold that learned CIT(A) was fully justified in cancelling the penalty levied under Section 271D in respect of capital

contribution by the partner to the firm. Accordingly, the Revenue's appeal is dismissed.

ITA No.2259/Del/2013 :-

36. The grounds raised by the Revenue in this appeal read as under:-

> *"1. The CIT(A) has erred in deleting the penalty of Rs.1,70,70,000/- levied by the AO u/s 271E for violation of provision of Section 269T of the I.T. Act 1961.*
>
> *2. The CIT(A) has erred in holding that partner and partnership firm are not different from each other and the provisions of section 269T cannot be made applicable between the transaction of the partner and the firm."*

37. The Assessing Officer had levied penalty under Section 271E amounting to ₹1,70,70,000/- in respect of the following debit in the assessee's books of account:-

Name of lender	Date of entry	Amount of loan or deposit repaid otherwise than by an account payee cheque or an account payee draft	Remarks
Rups Craft Inc	03/11/2006	15,45,000/-	Cash
Inder Pal Singh	07/06/2006	4,00,000/-	Cash
Inder Pal Singh	08/06/2006	4,00,000/-	Cash
Inder Pal Singh	17/06/2006	4,00,000/-	Cash
Inder Pal Singh	02/11/2006	25,00,000/-	Journal entry as cheque received from DNK creation
Inder Pal Singh	15/12/2006	7,00,000/-	Journal entry as cheque received from DNK creation
Inder Pal Singh	15/01/2007	50,00,000/-	PO 311712

Inder Pal Singh	31/01/2007	24,50,000/-	Journal entry as cheque received from DNK
Inder Pal Singh	07/02/2007	3,00,000/-	Cash
Inder Pal Singh	21/02/2007	12,75,000/-	Cash
Inder Pal Singh	01/03/2007	10,00,000/-	Cash
Inder Pal Singh	02/03/2007	5,00,000/-	Cash
Inder Pal Singh	08/03/2007	4,00,000/-	Cash
Inder Pal Singh	22/03/2007	2,00,000/-	Cash
Total		1,70,70,000/-	

38. Learned CIT(A) cancelled the penalty. Hence, this appeal by the Revenue.

39. We have heard the arguments of both the sides and perused relevant material placed before us. From the analysis of the debit entries in the assessee's books of account, the same can be divided in four categories – (i) debit by journal entry, (ii) debit by pay order, (iii) debit for payment in cash to partner and (iv) debit in cash in the name of Rups Craft Inc.

40. So far as first three debits are concerned, i.e., debit by way of journal entry (book entry), pay order as well as payment to the partner is concerned, identical issue is considered by us in assessee's own case for the same assessment year while dealing with the penalty levied under Section 271D. Our observations and finding in respect of credit by way of journal entry (book entry), pay order as well as credit from the partners would be squarely applicable in respect of debit by way of journal entry, pay order and payment to the partners which is debited in their capital account. Therefore, for the detailed discussion in assessee's own case, while considering the penalty levied under Section 271D, we are of the opinion that the learned CIT(A) was justified in cancelling the penalty levied under Section 271E for debit

by way of journal entry, debit by way of pay order as well as debit on account of payment to partner debited to capital account.

41. With regard to debit of cash in the account of M/s Rups Craft Inc, the learned CIT(A) while deleting penalty levied under Section 271D observed as under :-

> *"11.3 Regarding the repayment of Rs.15,45,000/- to M/s Rups Craft Inc. I find that the Assessing Officer is observation that there was a violation of the provisions of section 269T is not correct. In fact the appellant was doing business with the M/s Rups Craft Inc and all the transactions with this party related to business only and there was no transaction of loan or deposit. I also find that in the course of business Sh. Inderpal Singh, partner of the appellant firm had paid Rs.15,45,000/- though an account payee cheque no.57308 to M/s Rups Craft Inc on behalf of the appellant and consequently a journal entry dated 3.11.2006 was passed by increasing the capital of Sh. Inderpal Singh and reducing the credit balance of Rs.7,64,292/- which was already appearing in his name. In view of these facts since the repayment was not in respect of any loan or deposit but related to business transactions there was no violation of the provisions of section 269T of the Income-tax Act, 1961."*

42. At the time of hearing before us, the above factual finding recorded by the CIT(A) has not been controverted. The CIT(A) has clearly recorded the finding that there was the business transaction between the assessee firm and M/s Rups Craft Inc. and all the transactions with the said party were business transactions only and there was no transaction of loan or deposit. It was also observed that in fact there was no cash payment. On the other hand, the payment of ₹15,45,000/- was made by account payee cheque No.57308 to M/s Rups Craft Inc. by Shri Inderpal Singh Wadhawan, partner of the firm and consequently, the entry was passed in the assessee's books of

account. Therefore, there was no cash transaction. Both these findings recorded by the CIT(A) remained uncontroverted before us. We, therefore, find no justification to interfere with the order of learned CIT(A) in this regard. The same is sustained and the appeal of the Revenue is dismissed.

ITA No.3084/Del/2013 :-

43. The only ground raised in this appeal by the Revenue reads as under:-

> *"The CIT(A) has erred in deleting the penalty of Rs.4,04,79,453/- levied by the AO u/s 271E for violation of provisions of section 269T of the I.T. Act 1961.*
>
> *2. The CIT(A) has erred in holding that partner and partnership firm is one and the same person in the eyes of law and provision of section 269T are not applicable on the transaction entered by the partner with the firm."*

44. The Assessing Officer had levied the penalty under Section 271E in respect of the following debit entries in the assessee's books of account holding the same to be the repayment of loan or deposit in violation of Section 269T of the Act:-

Name of the lender	Date of entry	Amount of loan or deposit repaid otherwise than by an account payee cheques of an account payee bank draft.
DNK Creation		
Deepak Fabric	7/5/2007	1950000
Individual A/c		
Dewana Diary	14/11/2007	250000
Dewana Diary	7/12/2007	300000
Dewana Diary	1/2/2008	2100000

Dewana Diary	1/2/2008	140000
B.K. Brothers	14/5/2007	1500000
Godsons Bros.	1/2/2008	1000000
Godsons Bros.	13/2/2008	500000
Godsons Bros.	13/2/2008	500000
Molycoddle Fashion Pvt.Ltd.		

45. Learned CIT(A) cancelled the penalty. Hence, this appeal by the Revenue.

46. We have heard the arguments of both the sides and perused relevant material placed before us. With regard to repayment of ₹19,50,000/- in the name of M/s Deepak Fabrics, the CIT(A) has recorded the following finding:-

"6.9 Entry dated 7.5.2007 of Rs.19,50,000/- in the name of M/s Deepak Fabrics : In this case, I find that the appellant was doing business with M/s Deepak Fabrics as proprietor of M/s DNK Creation. It was on account of business transaction that the appellant had paid Rs.19,50,000/- vide an account payee cheque no.344561 dated 7.5.2007 to M/s Deepak Fabrics on behalf of the proprietary concern M/s DNK Creations. During the course of penalty proceedings, these facts were duly brought to notice of the Assessing Officer along with the copy of account of M/s DNK Creations in the books of the appellant, copy of account of M/s Deepak Fabrics and copy of account of the appellant in the books of M/s DNK Creation. The observation of the Assessing Officer that this payment was made to a lender and was not a business transaction was merely based on the report of the special auditor. On the contrary, the appellant had filed copies of the accounts which clearly showed that the transaction with M/s Deepak Fabrics was a business transaction and not a repayment of loan as held by the Addl. CIT. No independent finding was given by the Addl. CIT to state that this is a repayment of loan. Since, the transaction

in question is not a repayment of loan the provisions of section 269T read with section 271E are not applicable against this transaction."

47. Thus, the CIT(A) has recorded the finding that the appellant was doing the business of clothes in the proprietary concern named M/s DNK Creations. M/s DNK Creations, proprietary concern of the assessee had the business transactions with M/s Deepak Fabrics. The assessee made the payment of ₹19,50,000/- by account payee cheque to M/s Deepak Fabrics on behalf of the proprietary concern M/s DNK Creations. Thus, the CIT(A) has recorded the finding that it was not the repayment of loan within the provisions of Section 269T. The above finding of fact recorded by the CIT(A) has not been controverted before us. From this finding, it is evident that there was a business transaction between M/s DNK Creations, the proprietary concern of the assessee and M/s Deepak Fabrics. The payment was made in furtherance to such business transactions and moreover, the payment was made by account payee cheque. Thus, there was neither the cash payment nor there was repayment of the loan or deposit so as to levy penalty under Section 271E of the Act.

48. With regard to entry relating to M/s Dewana Dairy, the CIT(A) has recorded the finding in paragraph Nos.6.10 and 6.11 of his order which read as under:-

"6.10 Entry dated 14.11.2007 of Rs.25,00,000/- in the name of M/s Dewana Dairy : The facts in this regard are that M/s Vardaan Fashion, a partnership firm in which the appellant was a partner, paid Rs.25,00,000/- vide an account payee cheque no.498989 dated 14.11.2007 to M/s Dewana Dairy on behalf of the appellant. These transactions were business transactions and to prove it the appellant had filed copy of account of M/s Vardaan Fashion and M/s Dewana

Dairy in the books of the appellant and the ledger account of the appellant in the books of M/s Vardaan Fashion. Under the Indian Partnership Act, the partnership firm is not a juristic person and it works through its partners. Any payment made by the firm amounts to the payment made by the partner. Since, the partner and his partnership firm is one and the same person in the eye of law, there is no legality in making the payment by the firm on behalf of his partner. Hence, the provisions of section 269T do not apply to the transaction in question. The AR of the appellant in support of his case relied on the judgments of the Hon'ble High Court of Rajasthan in the case of CIT vs. Lokhpat Film Exchange (Cinema) (2008) 304 ITR 172 and of the ITAT A-Bench Ahmedabad in the case of Shrepak Enterprises vs. Deputy Commissioner of Income-tax (1998) 60 TTJ 199. Even otherwise, there was no contravention of the provisions of section 269T as the repayment was made only through an account payee cheque.

6.11 Entries dated 7.12.2007, 1.2.2008 and 1.2.2008 of Rs.30,00,000/-, Rs.21,00,000/- and Rs.1,40,000/- in the name of M/s Dewana Dairy : The nature of all these entries was same as discussed above while dealing with entry of Rs.25,00,000/- as all these payments have been made by M/s Vardaan Fashion, a partnership firm in which the appellant is a partner, on behalf of the appellant through account payee cheques. Therefore, as discussed above the provisions of section 269T read with section 271E are not applicable to these transactions."

49. From the above, it is evident that all these payments were made by M/s Vardaan Fashion, a partnership firm in which assessee is a partner. All the payments were made by account payee cheque and in the assessee's books of account, there was only a journal entry (book entry). We have already discussed at length in paragraph Nos.10 to 15 above that in respect of book entry, the provisions of Section 269SS/269T cannot be said to have been violated. For the detailed discussion therein, we uphold the order of learned CIT(A) wherein he

cancelled the penalty relating to debit in the name of M/s Dewana Dairy, by journal entry (book entry).

50. The debit relating to M/s B.K. Bros. is also by way of book entry. Similar is the debit in the name of M/s God Sons Bros. The finding of fact recorded by the learned CIT(A) that the debit in the name of M/s B.K. Bros. and M/s God Sons Bros. were by book entry only has not been controverted by the Revenue before us. Therefore, for the detailed discussion in paragraph Nos.10 to 15 above, we hold that the provisions of Section 269T cannot be said to have been violated in respect of book entry.

51. With regard to debit of ₹10,75,000/- in the name of M/s Molycoddle Fashion Pvt.Ltd., the CIT(A) has recorded the finding that the appellant paid an account payee cheque of ₹10,75,000/- on 1.2.2007 to M/s Molycoddle Fashion Pvt.Ltd. but wrongly debited to Estate Officer, HUDA. When the mistake was realized, a journal entry was passed on 25.5.2007 by crediting the account of Estate Officer, HUDA and debiting to M/s Molycoddle Fashion Pvt.Ltd. Thus, the debit entry in the case of M/s Molycoddle Fashion Pvt.Ltd. was only by way of book entry and for such debit entry, the provisions of Section 269T cannot be said to have been violated.

52. The debit of ₹4,00,000/- on 15.3.2008 in the name of M/s Molycoddle Fashion Pvt.Ltd. was as share application money. Admittedly, when an assessee applies for allotment of shares in some company, the payment is not loan or advance to that company. The factual finding recorded by the CIT(A) that the payment was for share application money has not been controverted by the Revenue before us. Therefore, the same is accepted and we have no hesitation in

holding that payment for allotment of shares as share application money cannot be said to be repayment of loan or advance so as to violate provisions of Section 269T.

53. So far as transaction with M/s Vardaan Fashion is concerned, we have already discussed similar issue in paragraph Nos.30 to 35 above. The assessee is a partner in M/s Vardaan Fashion and the transaction between the partner and the firm i.e. when the assessee makes a capital contribution to the firm or withdraws the money from his capital account, it cannot be said to be either loan or advance by the partner to the firm or the repayment of loan or advance by the firm to the partner. Therefore, for the detailed discussion in paragraph Nos.30 to 35 above, we hold that in respect of payment by the assessee to the partnership firm M/s Vardaan Fashion, it cannot be said that there is violation of Section 269T.

54. In view of the above, we are of the opinion that the CIT(A) rightly cancelled the penalty levied under Section 269T amounting to ₹4,04,79,453/-. Accordingly, we uphold the order of learned CIT(A) and dismiss the appeal filed by the Revenue.

ITA No.2252/Del/2013 :-

55. The grounds raised by the Revenue in this appeal read as under:-

> *"1. The CIT(A) has erred in deleting the penalty of Rs.95,25,000/- made by the AO u/s 271D for violation of provisions of section 269SS of the I.T. Act 1961.*
>
> *2. The CIT(A) has erred in admitting additional evidences under Rule 46A which were not produced before the AO despite providing two opportunities."*

56. The Assessing Officer had levied the penalty under Section 271D amounting to ₹95,25,000/- in respect of the following credit entries in the assessee's books of account:-

Name of lender	Date of entry	Amount of loan or deposit taken or accepted otherwise than by an account payee cheque or an account payee draft	Remarks
Satvinder Singh	15/12/2006	15,00,000/-	Journal entry passed and debit 5/83 property account
Nirupama Wadhawan	02/06/2006	5,00,000/-	Cash
Nirupama Wadhawan	12/10/2006	5,00,000/-	Cash
Nirupama Wadhawan	25/10/2006	5,00,000/-	Cash
Nirupama Wadhawan	19/01/2007	5,00,000/-	Cash
Nirupama Wadhawan	19/03/2007	4,00,000/-	Cash
Nirupama Wadhawan	20/03/2007	6,50,000/-	Cash
Satvinder Singh	15/11/2006	24,85,000/-	Journal entry as payment made to DNK Creation directly
God Sons Sales	05/02/2007	24,90,000/-	Journal entry passed as payment received by Vardaan Fashion
Total		95,25,000/-	

57. Learned CIT(A) cancelled the penalty. Hence, this appeal by the Revenue.

58. We have heard the arguments of both the sides and perused relevant material placed before us. So far as credit entry by way of journal entry (book entry) is concerned, we have considered this issue in detail in assessee's own case in paragraph Nos.10 to 15 and have taken the view that there is no violation of provisions of Section 269SS when there is a credit entry by way of journal entry (book entry).

59. So far as the acceptance of cash money from Nirupama Wadhawan is concerned, the CIT(A) has deleted the penalty with the following finding:-

> *"7.8 As regards the cash received from Smt. Nirupama Wadhawan, wife of the appellant, I find that the appellant had received this cash aggregating to Rs.30,50,000/- on six different dates. It has been explained by the appellant that he along with his wife, Smt. Nirupama Wadhawan, were intending to jointly purchase a house property and for this purpose he had taken the cash totaling to Rs.30,50,000/- from his wife which was available with her. It was explained that since the deal could not be materialized, the said amount was refunded to her through cheques. It was submitted that the said receipt of Rs.30,50,000/- from Smt. Nirupama Wadhawan during the period 2.6.2006 to 31.3.2007 was neither the loan nor deposit as observed by the Addl. CIT whereas on the contrary the funds were taken from her with the intention to purchase the property in a joint venture. It was also submitted that the amount in question taken from wife was a bona fide act with commercial expediency.*
>
> *7.9 The Hon'ble Calcutta High Court in the case of Dr. P.G. Panda vs. CIT (2000) 111 Taxman 86 held that where the assessee obtained certain loan from his wife in cash for construction of house property which was naturally a joint venture for prosperity of the family and the transaction did not involve any interest element and there was no promise to return the amount with or without interest, it could be said that there was a reasonable cause for not complying with section 269SS.*
>
> *7.10 In the case of ITO vs. Tarlochan Singh (2003) 128 Taxman 20 (Asr)(SMC), it has been held that where the assessee had received a loan of Rs.70,000/- in cash from his wife for investment in acquisition of immovable properties, and the assessee was under the bona fide belief that the amount was not to be refunded, no penalty was leviable.*

7.11 In the following cases, the Ahmedabad Bench of the Hon'ble ITAT have also cancelled the penalties levied u/s 271D even where loans/deposits were taken in cash.

a) Shreenathji Corporation vs. ACIT 58 TTJ 611.
b) Ganesh Wooden Industries ITA No.1626Ahd/1997, Bench 'SMC' order dated 8.7.2002.

7.12 In view of the facts of the case and the nature of the transactions and also respectfully following the above decisions and the decisions cited by the AR of the appellant I hold that there was a reasonable cause for not complying with the provisions of section 269SS of the Income-tax Act, 1961. The Assessing Officer was therefore not justified in imposing penalty u/s 271D in respect of cash received by the appellant from his wife."

60. After considering the facts of the case and the arguments of both the sides, we do not find any infirmity in the order of learned CIT(A). Smt. Nirupama Wadhawan is the wife of the assessee who had some surplus cash which she gave to the assessee because the assessee and his wife intended to jointly purchase a house property. Smt. Nirupama Wadhawan had given the surplus cash available with her for the purpose of purchase of such house property. However, when the deal for purchase of the house property could not be materialized, the said amount was refunded to her through cheque. We find that the similar issue was considered by ITAT, Amritsar Bench in the case of ITO Vs. Tarlochan Singh – [2003] 128 Taxman 20 (Mag.). In the said case, the husband had taken the cash of ₹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 ITAT holding as under :-

"Even keeping in view the contents of the departmental Circular No.387, 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.

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.

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.

In view of the above, the penalty sustained by the Commissioner (Appeals) was cancelled."

61. That the ratio of the above decision of ITAT, Amritsar Bench would be squarely applicable to the facts of the assessee's case. Here also, the wife had given the money to the husband for acquisition of a property which was supposed to be purchased jointly. It is a different matter that ultimately the deal could not materialize. However, the claim of the assessee that amount was taken by the assessee from her wife for purchase of the property has not been disputed by the Revenue. Therefore, the ratio of the above decision of ITAT, Amritsar Bench would be squarely applicable to the appeal under consideration before us.

62. In the case of CIT Vs. Sunil Kumar Goel – [2009] 315 ITR 163, Hon'ble Punjab & 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."*

63. That the ratio of the above decision of Hon'ble Punjab & Haryana High Court would also be squarely applicable in respect of cash transaction between the assessee and his wife. No contrary decision of any High Court or the Tribunal has been brought to our knowledge. Admittedly, the transaction was between the husband and wife with the intention to purchase a property jointly. When the deal for purchase of the property could not materialize, the husband i.e. the assessee refunded the amount to his wife. Thus, in our opinion, the

acceptance of the cash by the husband from his wife cannot be said to be taking of the loan or advance in strict sense of Section 269SS. We, therefore, find no infirmity in the order of learned CIT(A) wherein he cancelled the penalty levied under Section 271D for the acceptance of cash by the assessee from his wife. We, therefore, uphold the order of learned CIT(A) and dismiss the appeal filed by the Revenue.

64. In the result, all the appeals of the Revenue are dismissed.

Decision pronounced in the open Court on 16th January, 2015.

Sd/-	Sd/-
(H.S. SIDHU)	**(G.D. AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : 16.01.2015
VK.

Copy forwarded to: -

1. Appellant : **Assistant Commissioner of Income Tax, Circle-33(1), New Delhi.**
2. Respondent : **M/s Vardaan Fashion and Shri Inderpal Singh Wadhawan, E-1/7, 2nd Floor, East Patel Nagar, New Delhi – 110 008.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar