

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH**

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT  
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

[Through Virtual Court]

**ITA. No: 2173/Ahd/2018  
(Assessment Year: 2013-14)**

<b>M/s. Apple Weighinfra Limited Address: 1-1, New Madhupura Market, Shahibaug, Ahmedabad- 380004</b>		<b>JCIT Central Range-1, Ahmedabad</b>
<b>PAN No. AAGCA8862K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appellant by : Shri D. K. Parikh, A.R.  
Respondent by : Dr. Shyam Prasad, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 19-07-2021  
Date of Pronouncement : 24-08-2021

**PER MAHAVIR PRASAD, J.M.**

1. This appeal has been filed by the Assessee is directed against the order of the Commissioner of Income Tax (hereinafter called CIT(A)?) order no. CIT(A)-11/C.C-

1(1)/Abd/552-A/2016-17 order dated 01/08/2018 arising out of assessment order dated 07.01.2016. Assessee has taken following grounds of appeal:

*1. That the learned CIT (A) has erred in law and in facts in confirming the penalty of Rs. 17,40,000/- under section 271D of the Income tax Act, 1961 for alleged contravention of provisions of section 269SS of the Act. On the facts and in the circumstances of the appellant's case, the receipt from director being not a loan or deposit, the provisions of section 269SS are not applicable. It be so held now and penalty be deleted.*

*2. Without prejudice to the above, the Id CIT(Appeals) erred both in law and on facts in not appreciating that the Id AO could not have issued show cause notice when he had treated the receipt as unexplained u/s 68 of the Act in the case of the appellant. The provisions of section 269SS ought not to have been invoked. It be so held now and penalty be deleted.*

*3. Without prejudice to the above, both the lower authorities failed to appreciate that the appellant had not violated the provisions of section 269SS for accepting amount in current account transactions and considering also that there was reasonable cause within the meaning of section 273B of the Act, penalty u/s 271D was not leviable. It be so held now and penalty of Rs. 17,40,000/- be deleted.*

*4. The order passed by the Id JCIT is illegal, invalid and bad in law. It be annulled now.*

2. The Brief facts of the case are that assessee had taken amount of Rs. 17,40,000/- from Shri Mitesh R. Shah through cash and for which the Ld. A.O. levied the penalty of Rs. 17,40,000/- u/s 271D of the Act, as the loan acceptance was made otherwise by an account payee cheque.
3. Assessee company had accepted the amount of Rs. 17,40,000/- in cash from director Shri Mitesh R. Shah as the assessee company was required the fund for the purpose of the business of company. During the course of the assessment proceedings, it is submitted by Shri Mitesh R. Shah that he has provided the funds out of his savings and borrowings from farmers and in support of the same copies of 7/12 abstract of the farmers was submitted before the Ld. A.O.

4. Section 271D contemplates 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 the loan or deposit so taken or accepted.
5. In this case, assessee company undisputedly accepted cash of Rs. 17,40,000/- from its director Shri Mitesh R. Shah, therefore, penalty was levied by the Ld. A.O.
6. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who dismissed the plea of the assessee that the provisions of section 269SS & 271D do not have any exception. If deposit or loan is more than Rs. 20,000/- and is otherwise than account payee cheque or through banking channel or electronic mode, it is in violation of Income Tax law and confirmed the action of the ld. A.O.
7. Now assessee has come before us and stated that the ITAT has dismissed the quantum appeal of the assessee in ITA No. 2712/Ahd/2018 against addition made u/s 68 and the appeal being withdrawn by the appellant by the ITAT on 22.01.2021 and argued that since quantum addition u/s 68 has become final in the hands of the appellant firm treating the amount received as appellant companies income by the Assessing Officer in his order dated 07.01.2016 and assessee paid taxes thereon.
8. In support of its contention, Ld. A.R. cited a judgment of Jurisdictional High Court in the matter of CIT vs. Shyam Corporation 218 Taxman 136 (Guj.) wherein it is held that if assessee received booking advance in cash which, during assessment proceedings, had been assessed as undisclosed income of assessee under section 68 of the Act- Whether such amount could be considered as deposit/loan in violation of section 269SS/269T for levy of penalty u/s 271D/271E. The Hon'ble High Court has decided matter in favour of assessee.

9. Apart from above said judgment, assessee also cited a judgment of Hon'ble Madras High Court in the matter of DIT(Exemptions) vs. Young Men Christian Association [2014] 49 taxmann.com 72 (Madras) wherein it is held once certain amount was subjected to tax under section 68, question of treating it as transaction in violation of section 269SS or section 269T did not arise as it stood mutually excluded.
10. Thus, respectfully following the aforesaid judgment of Hon'ble High Courts, we allow the appeal of the assessee.
11. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on 24 - 08- 2021

**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER** True Copy  
Ahmedabad: Dated 24/08/2021

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad