आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI

डॉ. ओ. के. नारायणन, उपाध्यक्ष एवं श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष ।

Before Dr.O.K. Narayanan, Vice-President &
Shri V. Durga Rao, Judicial Member

I.T.A. Nos.2047, 2048, 2049, 2050 & 2051/Mds/2013
Assessment Years:2007-08, 08-09, 09-10, 10-11 & 2011-12

The Assistant Commissioner of Income Tax, Circle I, D.P. Thottam, Muthialpet, Puducherry 605 003.	Vs.	Sri Pajani Adaicalam, No.115, Muthia Mudali Street, Muthialpet, Pondicherry 605 003. **[PAN: AABPA2573M]**
(अपीलार्थी /**Appellant**)		(प्रत्यर्थी/**Respondent**)

I.T.A. Nos. 2052, 2053, 2054 & 2055/Mds/2013
Assessment Years:2008-09, 09-10, 10-11 & 2011-12

The Assistant Commissioner of Income Tax, Circle I, D.P. Thottam, Muthialpet, Puducherry 605 003.	Vs.	Sri M. Sougoumarin, No.115, Muthia Mudali Street, Muthialpet, Pondicherry 605 003. **[PAN: AAIPS8447D]**
(अपीलार्थी /**Appellant**)		(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri Guru Bhashyam, JCIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri A.S. Sriraman, Advocate
सुनवाई की तारीख/ Date of hearing	:	22.07.2014
घोषणा की तारीख /Date of Pronouncement	:	22.07.2014

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These two batches of appeals filed by the Revenue pertains to two different assessees are directed against different orders of the ld.

Commissioner of Income Tax (Appeals) III, Chennai for different assessment years.

2. The appeals of the Revenue in I.T.A. Nos. 2047 to 2051/Mds/2013 are found to have been filed late by five days and the Department filed petitions for condonation of delay in filing the appeal. By referring to the contents therein, the ld. DR has requested to condone the delay in filing all the appeals. The ld. Counsel for the assessee has not object to the submissions of the ld. DR. On perusal of the petitions filed for condonation of delay, we are satisfied that the Department was prevented by sufficient cause from not filing the appeal within the stipulated time. Accordingly, we condone the delay of five days in filing the appeals and admit the same for hearing.

3. Brief facts of the case are that a survey under section 133A was conducted in the case of Shri A. Kannan, Prop. Vadamalayan Finance, No. C-4, II Floor, Thiyagaraja Apartment, First Main Road, Thanthai Periyar Nagar, Pondicherry on 08.09.2011. It was found in the course of survey that Shri A. Kannan was doing money lending business. He chose to give loans to only selected group of persons. He gave monies to persons after deducting interest for ten months. The amount is

divided into ten monthly instalments. Once the repayments of ten instalments are over, again the same persons took further loan. He charged interest on the loan at one percent per month. The whole transaction was done by cash only i.e. no cheques or drafts came into play. The ITO found during the survey proceedings that the assessee had violated the provisions of both the sections 269SS and 269T of the Income Tax Act as the assessee had accepted the loans in cash exceeding ₹.20,000/- and repaid the loan exceeding ₹. 20,000/-.

4. The assessee was served notice under section 271D r.w.s. 269SS of the Income Tax Act on 21.02.2012. The assessee vide his letter dated 23.07.2012 has submitted a detailed reply contending that the legislative intention for the provisions of Sec.269SS and Sec.269T were inserted in the Finance Act, 1984. The Board's Circular No.387, dated 06.07.1984 elaborately explains the scope and intention of insertion of these provisions. The provisions have been brought on statute to prevent unaccounted income and where the income is explained there cannot be levy of penalty. The Finance Minister's speech clearly indicates the genuine loans and deposits are not covered by Sec.269SS & Sec.269T. Money lending involves two parties, the giver and the taker. The provisions of Sec.269SS and

Sec.269T only penalize the receiver, which is not justifiable. Before the JCIT, following points are presented for consideration:-

- The transactions have been duly recorded in the books of the Creditor on the date on which it was transacted.
- The details of the person to whom the loan was given has also been clearly recorded in the books giving following details.
- Name, Name of the father, Name of the business concern, Complete Postal Address, Loan a/c No.
- The creditor is a man of means and is regularly assessed to Income Tax.
- The creditor is assessed to Income Tax in Ward 1(1), Pondicherry.
- The creditor has been regular in filing his returns of income.
- The creditor has accounted for the interest income earned on loans advanced.
- The creditor has been subject to scrutiny and no part of the loan transactions has been found to be doubtful or ingenuine.
- The creditor has been assessed to tax for more than two decades. His assessment has been scrutinized more than once. The officer who had carried out the scrutiny has never condemned the mode of transaction as all the loan transactions and the recovery thereof have been made by cash.
- The receiver has recorded all the loan transactions in the books of the firm in which he is a partner.
- The loan so received has been banked immediately.
- The identity of the creditor has been clearly stated and proved to be satisfaction of the department.
- The creditor has not denied or repudiated the transaction.
- The receiver has been a tax payer since 1961. He has recorded all the loan transactions through the books of the firm in which he is a partner. The repayments thereof have also been recorded in the books of the firm in which he is a partner.
- The receiver has not been visited with any penalty under the Income Tax Act or any other applicable law in force.
- The receiver is a senior citizen and businessman with an impeccable track record.
- The transactions have taken place in an open manner.
- There is no black money involved in the transactions.

- The transactions have been made in as the lender had insisted on the same.
- The said fact has been confirmed by the lender.
- The returns of income have all been filed voluntarily before the initiation of any proceeding by the department.

In support of his argument, the assessee has relied upon the following case laws:-

Industrial Enterprises Vs DCIT (2000) 68 TTJ (Hyd) (ITA D 373
Azadi Bachao Andolan Vs. Union of India (2001) 252 ITR 471 (Delhi)
Hindustan Steel Ltd. Vs. State of Orissa 83 ITR 26 (SC)
Asst. Director of Inspection (Investigation) Vs. Kum. A.B. Shanthi (SC)
CIT Vs Bhagwati Prasad Barjoria HUF 183 CTR (Gau) (HC) 484
Farrukhabad Investment (I) Ltd. Vs. JCIT 85 ITO 230 (ITAT)(Del)
The decision of Hon 'ble Supreme Court reported in 174 CTR 514
Shreenath Builder Vs. DC IT (2000) 66 TTJ (Ahd) (ITAT) 113
I.T.O. Vs. Lakshmi Enterprises & Ors. (1990) 185 ITR 595 (AP)
Muthoot M. George Brothers. Vs ACIT (1993) 47 TTJ (Coash) 434 : 46 ITD 10
Omec Engineers Vs. CIT 217 CTR 144 (Jhar)(HC)
CIT Vs. Shree Ambica Flour Mills Corporation 6 DTR (Guj) (HC) 169
CIT Vs Eetach Agencies
CIT Vs Saini Medical Store 276 ITR 79 (P&H) (HC)
CIT Vs Bhagwati Prasad Bajoria (HUF) 263 ITR 487 (Gau)(HC)
CIT Vs Speedways rubber Pvt. Ltd. 326 ITR 31 (P&H) (HC)
CIT Vs Sunil Kumar Geel 315 ITR 163 (P&H) (HC)

5. On 16.08.2012 a letter was issued to the assessee calling for the following details and the case was posted for hearing on 24.08.2012.

(i) Your assessment details and acknowledgement for filing returns of income for the year of penalty.
(ii) Details of all bank accounts held and operated by you for the year of penalty.
(iii) Your books of accounts for the year of penalty and extracts of entries in the books of accounts for the loans received in cash and repayment thereof.

(iv) Books of account of the firm or any other person by whom the funds were utilized indicating receipts and repayments of loan. Please clearly indicate the opening and closing cash balance for each day of receipt of loan.
(v) Date-wise receipt of cash loans taken by you from Shri A.Kannan and repayment thereof.
(vi) Copies of your financial statements with schedules for the year of penalty.
(vii) Utility of the loan taken in cash with extracts of your books of accounts.
(viii) Please establish reasonable cause for non-compliance of Sec.269SS/269T in writing supported by evidences for such reasonable cause.

6. In the course of penal proceedings, Joint Commissioner of Income Tax, after considering the detailed submissions of the assessee, observed that the assessee has not denied having taken and repaid loan in cash. The JCIT further noted that assessee accepted the cash loan more than once and repaid the same in many instalments with an intentional motive to dishonour the law. It is stated by the JCIT that the lender of the loan Sri A.Kannan admitted the gift shown in the return of income as unaccounted income in his hand for the A. Ys. 2008-09 & 2011-12 and offered the same for tax purposes. JCIT further held that the assessee has not come out with full facts on urgency to take loan in cash and violation is intentional and purposeful and by relying various decisions, levied penalty u/s 271D of the IT Act of ₹. 20,00,000/-.

7. The assessee carried the matter in appeal before the ld. CIT(Appeals) and before the ld. CIT(Appeals), the assessee has filed a detailed written submissions on 27.08.2013 and are reproduced as under:

> *" Funds have been borrowed by cash to ensure clearance of cheques issued by the partnership firm and therefore, the necessity of borrowing otherwise than by account payee cheque is proved. Also the fact that violation is not a solitary transaction but a series of transaction does not show guilty mind as each of the borrowing was for business necessity and had taken place in an open manner.*
>
> *The appellant had borrowed additional funds from private parties and banks in his individual capacity, totalling to more than 30 in number for funding the business exigencies. All the other loan funds other than the loan from Vadamalayan Kannan have been transacted by cheque. This goes to prove the conduct of the appellant and that the violation was not will full and purely at the instance of the lender and compelled to do so as he was left with no other options.*
> *The appellant is a business man of repute, which has been accepted and narrated in the order by the learned JCIT. In order to maintain the appellant's status in the business community the cash loan came handy to camouflage the huge loss incurred by the group concern and served as a face saving around the business community at large.*
> *The loan was transacted in cash as the lender had insisted on the said mode. Shri A.Kannan has transacted all loan disbursements and the repayments thereof by cash. This fact is evident from the books of accounts impounded and retained by the department.*
> *The transactions had taken place in an open manner and hence there was no loss of revenue.*
> *Penalty can be levied only if the appellant had acted deliberately i.e, mens rea, guilty mind is essential before penalty can be levied.*
> *Power to levy penalty is discretionary and penalty cannot be levied merely because it is lawful to do so,*
> *No penalty can be levied for technical or venial breach of the provisions.*
> *The transactions are bona fide in nature and have been accepted by the department both in hands of the lender and the appellant.*
> *The business exigency has been clearly narrated/ established with clinching supporting documents, which has been disregarded and brushed aside without any application of mind.*
> *The appellant had been transacting in cash and had been disclosing the fact in the returns of income filed since the first year of transaction. This apart the account copies of the partners have been enclosed along with the*

return of income of the firm, which clearly narrated the mode of each and every transaction, name of the lender, the date and the amount. Had the intention been mala fide / deliberate the disclosure would not have been made by the appellant, though there was no legal obligation on his part to do so, The return of income specified by the statute has no provision for disclosure of the loan transactions and the mode in which it has been transacted.
The Hon'ble Madras High Court in Commissioner of Income Tax vs Kundrathur Finance and chit co (2006) 283 ITR 329 (Mad) following the decision of the Hon'ble Supreme court in Assistant Director of Inspection(Investigation) Vs Kum A.B. Shanthi (2002) 255 ITR 258 (SC) held that " if there was genuine and bonafide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty". This has been reiterated in a recent decision of the Madras High Court in The Commissioner of Income Tax Vs V. Sivakumar, Reliance Finance & Investments Tax Case (Appeal) No:279 of 2010.

Reasonable cause for the loan of Rs.20,00,000/- obtained on 06.12.2006

The appellant had borrowed a sum of Rs.20,00,000/- from A. Kannan Prop: Vadamalayan Finance, Pondicherry on 06-12-2006. The appellant had deposited the loan borrowed Rs.18,60,000/- (Net of Interest) into the Current account with ICICI Bank, A/C No:17814, of M/S. Muthu Silk House, a partnership concern in which the appellant is a partner.

M/S Muthu Silk House is a registered partnership firm the senior partners being blood brothers, Shri K. Muthukaruppan (Appellant's father), his brother Shri K. Perumal and their children.

The firm had to honour its day to day business commitments and the funds were not readily available for the business as a major portion got blocked with the sister concern and the sister concern was not able to repay it on the appointed dates. The money was expected to be returned on call, as the sister had faulted, the appellant being the senior partner was duty bound, compelled, driven to make available the funds for the partnership firm.

Under these circumstances he was driven to borrow funds by cash and deposit it in the bank to facilitate honouring of cheques issued.

The deposit of Rs.18,60,000/- on 06-12-2006 had facilitated to honour business exigencies. The cheques cleared the next few days Rs.21,12,869.00.

Funds have been borrowed by cash to ensure clearance of cheques issued by the partnership firm and therefore, the necessity of borrowing otherwise than by account payee cheque is proved. Also the fact that violation is not a solitary transaction but a series of transaction does not show guilty mind as each of the borrowing was for business necessity and had taken place in an open manner."

8. After considering the detailed submissions filed by the assessee, the ld. CIT(Appeals), deleted the penalty of ₹.20,00,000/- by observing as under:

"I have considered the assessee's submission's as well as the findings given in the order of penalty. There is no dispute that assessee accepted cash loan of Rs. 20,00,000/- from Sri A.Kannan during the year under consideration. It is also not a dispute that Sri A.Kannan used to give cash loans to various persons and assessee is one of them. Sri Kannan used to charge 1% per month as interest and only net amount was given to the assessee in cash during the year under consideration. It is stated by the AR of the assessee that assessee borrowed loan to ensure clearance' of cheques by the partnership firm. Assessee borrowed loan funds from private parties and banks in his individual capacity totaling to more than 30 in number other than the loan from Vadamalayan Kannan and same was on the insistence of the lender. The AR of the assessee furnished an affidavit dated 13.12.2012 from A.Kannan stating that Mr. A.Kannan doing the business of finance has transacted all the loan transactions only by cash since past 4 decades. It is stated in the affidavit that all the loan transactions were recorded in his books of accounts narrating the details of the borrower, father name, name of the business concern, residential address and loan amount. The AR of the assessee also filed affidavit dated 13th December, 2012 from M.Pajani Adaicalam, son of Late Sri K.Muthukaruppan, partner M/s Muthu Gold House declaring that lender had insisted the loan transactions in cash for both acceptance and repayment of loans. It is stated by the AR of the assessee that though the affidavits were not available before the AO, the contents of the same has very much available with the AO and the Joint Commissioner of Income Tax, Puducherry. The loan transactions were disclosed in the return of income filed with the department. This apart, the account copies of the partners have been enclosed alongwith the return of income which clearly narrated the mode of each and every transaction, the name of the lender, the date and amount given. The Joint Commissioner of Income Tax held that assessee has not furnished full facts on the urgency to take loan in cash and same was intentional to evade tax. On the other hand the AR of the assessee stated that entire details in the form of paper book furnished

to the Joint Commissioner of Income Tax on 28.08.2012 with the details of the utilization of the, loan to fund the firm wherein the assessee is a partner which is evidenced in the page 2 & page 3 of the assessment order. The AR of the assessee further stated that the Joint Commissioner of Income Tax had not appreciated the utilization of the funds and shortage of the funds of the relevant dates from the details attached with the paper book which clearly show the business exigency for availing the loan in cash. The penalty u/s 271D is not leviable for violation of the provisions or Sec. 26955 & 269T of the IT Act in the case of genuine loan transactions provided the assessee has reasonable cause for acceptance of the cash loan. The insistence of the lender to advance loans in cash cannot be a reasonable cause for not to levy penalty in the hand of the recipient of the loan i.e. the assessee. However, the business requirement of the borrower is to be kept in mind.

The appellant had borrowed a sum of Rs.20,00,000/- from A. Kannan Prop: Vadamalayan Finance, Pondicherry on 06-12-2006. The appellant had deposited the loan borrowed Rs.18,60,000/- (Net of Interest) into the Current account with ICICI Bank, A/C No:17814, of M/S. Muthu Silk House, a partnership concern in which the appellant is a partner. M/S Muthu Silk House is a registered partnership firm the senior partners being blood brothers, Shri K.Muthukaruppan (Appellant's father), his brother Shri. K. Perumal and their children. The firm had to honour its day to day business commitments and the funds were not' readily available for the business as a major portion got blocked with the sister concern and the sister concern was not able to repay it on the appointed dates. The money was expected to be returned on call, as the sister had faulted, the appellant being the senior partner was duty bound, compelled, driven to make available the funds for the partnership firm. Under these circumstances he was driven to borrow funds by cash and deposit it in the bank to facilitate honouring of cheques issued. The deposit of Rs.18,60,000/= on 06.12.2006 had facilitated to honour business exigencies. The cheques cleared the next few days Rs.21,12,869.00.

From the above facts, it is clear that funds have been borrowed by cash to ensure clearance of cheques issued by the partnership firm wherein the assessee is a partner. In the cases cited by the Joint Commissioner of Income Tax, the Courts have taken the view that the penalties u/s 271D & 271E are leviable for contravention of the provisions of Sec. 269SS & 269T of the IT Act provided there was no reasonable cause for such contraventions. In the instant case, there exists urgent business exigency in acceptance of the loan in cash from A.Kannan on the relevant date. The genuineness of the loan creditors and the loan transactions were never doubted by the department. The department has not taxed these amounts in the hand of the lender i.e. A.Kannan. As per the findings of the AO, *certain amounts of gifts shown in the capital account of Sri A.Kannan was offered for tax and not the loan amounts. On the question of business exigency, the Hon'ble High Court of Madras in the case of Commissioner of Income Tax and Balaji Traders reported in 303 ITR 312 held that there exists reasonable cause for not levying penalty u/s 271D of the IT Act. In that case Hon'ble High Court of Madras held as under:*

"Both CIT(A) and Tribunal having found that there was business exigency forcing the assessee to take cash loans, the genuineness of the creditors and transactors were never doubted by the Department and there was no revenue loss to the State Exchequer. The assessee has shown reasonable cause. The finding recorded by the Tribunal as the reasonable cause is essentially a finding of fact and no question of law much less substantial question of law would arise."

In another case, Hon'ble High Court of Madras, in the case of CIT Vs Ratna Agencies reported in 284 ITR 609 held that the alleged contravention did not result in any unaccounted transaction and that said transactions were made only for meeting the sudden demand of overdraft account and penalty could not be imposed.

In view of the above facts and circumstances of the case and legal position, I am of the view there existed reasonable cause for acceptance of the loan in cash by the assessee for urgent business necessity. The specific ground No.6 raised by the assessee that the learned CIT failed to appreciate the existence of business exigency underlying each and every transaction is allowed. As the assessee satisfied the existence of the reasonable cause for contravention of the provisions of Sec. 269SS of the IT Act, the penalty levied by the Joint Commissioner of Income Tax u/s 271D of Rs.20,00,000/- is deleted. Since the penalty levied u/s 271D is deleted, the other grounds raised by the assessee are of academic; discussion only."

9. Aggrieved, the Revenue is in appeal before the Tribunal.

10. The ld. DR has dutifully supported the order passed by the Assessing Officer.

11. On the other hand, the ld. Counsel for the assessee has strongly supported the order passed by the ld. CIT(Appeals). He also relied on the decision of the Coordinate Bench in assessees' own case for the

assessment year 2011-12 & 2012-13 in I.T.A. Nos. 1826 & 1827/Mds/2013, vide order dated 31.10.2013.

12. We have heard both sides, perused the materials on record and gone through the orders of authorities below. In this case, there is no dispute that the assessee had accepted cash loan of ₹. 20,00,000/- from Sri A. Kannan. It is also not a dispute that Sri A.Kannan used to give cash loans to various persons and assessee is one of them. Sri Kannan used to charge 1% per month as interest and only net amount was given to the assessee in cash during the year under consideration. It is stated that the assessee borrowed loan to ensure clearance of cheques by the partnership firm. The assessee borrowed loan funds from private parties and banks in his individual capacity totaling to more than 30 in number other than the loan from Vadamalayan Kannan and same was on the insistence of the lender. The assessee disclosed the loan transactions in the return of income at the time of filing of returns. The accounts copies of the partners have also been enclosed along with the return of income which clearly shows the mode of each and every transaction, the name of the lender, the date and amount given. In the penalty order, the JCIT held that the assessee has not furnished full facts on the urgency to take loan in cash and same was intentional to evade tax and imposed penalty under section 271D of the Act without appreciating the explanation offered by the assessee giving details

of the utilization of the loan to fund the firm wherein the assessee is a partner, which was duly accepted by the Assessing Officer. On appeal, the ld. CIT(Appeals) passed a detailed order by relying various case law and while accepting the explanations offered by the assessee, he has observed that there existed reasonable cause for acceptance of the loan in cash by the assessee for urgent business necessity. The ld. CIT(Appeals) observed that in the instant case, there exists urgent business exigency in acceptance of the loan in cash from the lender on the relevant date. The genuineness of the loan creditors and the loan transactions were never doubted by the Department. Moreover, the Department has not taxed these amounts in the hand of the lender i.e. Shri A. Kannan. He also observed that the assessee satisfies the existence of the reasonable cause for contravention of the provisions of section 269SS of the Act. When the assessee had shown reasonable cause and the reasonable cause is essentially a finding of fact, no question of law much less substantial question of law would arise. The alleged contravention did not result in any unaccounted transaction and that said transactions were made only to meet the sudden demand in the business activities. The Coordinate Bench of the Tribunal while dealing with penalty under section 271E of the Act in assessees' own cases in I.T.A. Nos. 1820 to 1825/Mds/2013 & others vide order dated 31.10.2013 has observed as under:

> *"23........ In the present case, all the transactions have been duly recorded in the books of the creditor as well as in the books of the assessees. The loans accepted by the assessees have been merged in the business finance of the assessees reflecting in their books of account. The funds required for repayment of loans were also generated out of the business as reflected in their books of account. The details of the parties are available on record. The assessees as well as lenders are all regularly assessed to income-tax. The identity of the parties are beyond doubt. The factum of loan and repayments are beyond doubt. The genuineness of the transactions is also not in doubt. It is also established by the assessees that there existed similar emergency for repaying the loan in cash, as the emergency which prompted them to take loans in cash. Therefore, this is a case where there is a reasonable cause for the assessees to repay the loans in cash. In such circumstances, it is to be seen that the violation of Section 269T is technical. Therefore, we find that the Commissioner of Income Tax (Appeals) ought have deleted the penalties levied under Section 271E, when in fact, for good reasons, he was deleting the penalties levied under Section 271D."*

13. In view of the facts and circumstances of the case and also by following the observations made by the Coordinate Bench in the above case, we find no infirmity in the order passed by the ld. CIT(Appeals) in deleting the penalty imposed under section 271D of the Act. Accordingly, we confirm the order passed by the ld. CIT(Appeals) and dismiss all the appeals filed by the Revenue.

I.T.A. Nos. 2052, 2053, 2054 & 2055/Mds/2013

14. So far as appeals of the Revenue in I.T.A. Nos. 2052 to 2055/Mds/2013 are concerned, except change of figures, the facts and issue raised are similar. In view of our above decision, these appeals of the Revenue are also dismissed.

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

Order pronounced in the open court at the time of hearing on Tuesday, the 22nd of July, 2014 at Chennai.

Sd/-	Sd/-
(डॉ. ओ. के. नारायणन)	**(वी. दुर्गा राव)**
(Dr. O.K. NARAYANAN)	(V. DURGA RAO)
उपाध्यक्ष /VICE-PRESIDENT	**न्यायिक सदस्य** / JUDICIAL MEMBER

Dated: 22.07.2014.

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.