

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी', मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI**

**सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य**

**BEFORE SHRI R.C.SHARMA, AM**

**&**

**SHRI SANJAY GARG, JM**

**आयकर अपील सं./ITA No.5509&5510/Mum/2013**

**(निर्धारण वर्ष / Assessment Year :2005-06)**

Goldstar Electricals Pvt. Ltd. B-6-7, Nandkishore Ind. E. Mahakali Caves Road, Andheri(E), Mumbai-400093	Vs.	ACIT-8(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACG 3483 G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Sanjay R. Parikh

राजस्व की ओर से /Revenue by : Shri Vijay Kumar Bora

सुनवाई की तारीख / Date of Hearing : **07/05/2015**

घोषणा की तारीख/Date of Pronouncement **05/06/2015**

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the appeals filed by the assessee against the order of CIT(A), Mumbai for the assessment year 2005-06, in the matter of imposition of penalty u/s.271D & 271E of the I.T.Act.

2. Rival contentions have been heard and record perused. Facts in brief are that return filed by the assessee was accepted by the AO under summary assessment u/s.143(1), wherein it was observed that as per the tax audit report filed along with the return of income, the assessee company had accepted the following amounts of loans in violation of the provision of Section 269SS of the Act :-

Sl. No	Name of the person	Mode of acceptance	Amount (Rs)	Date of transaction
1.	Smt. Lata G.Shah	J/V	12,00,000	31.03.2005
2.	Shri Rahul Shah	J/V	3,25,000	31.03.2005
		Total	15,25,000	

In view of the above observation, the AO issued a notice u/s.274 to the assessee company. Thereafter the AO imposed penalty u/s.271D equal to the amount of loan taken. Similar penalty was levied u/s.271E.

3. By the impugned order, the CIT(A) confirmed the action of the AO for levy of penalty.

4. We have considered rival contentions and found that the assessee has received instructions from one of the Directors Mr. Rahul G. Shah to credit the account of his wife Smt. Lata G. Shah by Rs.12,00,000/- debiting his account with the same amount. Accordingly, the assessee has passed a journal entry debiting Rahul G. Shah loan account and crediting Lata G. Shah loan account. Here, there was no physical receipt from Smt. Lata G. Shah or there was no physical repayment of Rs.12 lac to Mr. Rahul G. Shah. The assessee has also credited Rs.3,25,000/- by way of Director Remuneration to Mr. Rahul Girish Shah on 31.03.2005, by passing journal entry debiting Director Remuneration. The said amount is not received by the assessee company as loan or deposit and therefore it cannot be said that the amount was received by assessee otherwise then by account payee cheque or account payee bank draft.

5. Hon'ble Bombay High Court in the case of Triumph International Finance (I) Ltd., 345 ITR 270, held that settling claims by making journal entries in the respective books is also one of the recognized modes of

repaying loan or deposit. In the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan or deposit was not a bona fide transaction and was made with a view to evade tax, the cause shown by the assessee was a reasonable cause and in view of section 273B of the Act, no penalty under section 271E could be imposed for contravening the provisions of section 269T of the Act.

6. Applying the proposition of law laid down by the Hon'ble High Court, we found that in the instant case there was already credit in the account of Mr. Rahul G. Shah, which was not paid in cash but was credited in the name of his wife. Such credit either in the account of Rahul G. Shah was never doubted insofar as there was already credit existing in the books of account of assessee, or crediting this amount in the name of his wife by debiting account of Rahul G. Shah was doubted as non-genuine. The amount of Director's remuneration credited to the account of Mr. Rahul G. Shah does not amount to any loan by assessee company to R.G.Shah, therefore, the AO was not justified in treating such credit of Director's remuneration in his account as loan transaction and thereby imposing penalty u/s.271D of the Act. Accordingly, we do not find any justification for imposition of penalty by assuming that amount crediting in the name of assessee's wife by debiting assessee's loan account, which was already there in the books of account amounts to any contravention of provisions of Section 269SS so as to impose penalty u/s.271D&271E. Debiting

assessee's account was treated by the AO as repayment of loan and crediting his wife's account was treated by the AO as receipt of loan.

7. Even on the ground of limitation, we found that penalty proceedings u/s.274 r.w.s.271D & 271E, were initiated on 2-8-2007. As per Section 275(1)(c), penalty could be imposed only before end of the financial year or within the six months in which the penalty proceedings were initiated. As the later period expired on 31-3-2008, the penalty could have been imposed by that date only. Thus, the penalty imposed in 11-9-2012 was barred by limitation.

8. **In the result, both appeals of the assessee are allowed.**  
Order pronounced in the open court on this 05/06/2015.

**Sd/-**

(संजय गर्ग)

**(SANJAY GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 05/06/2015

प्र.कु.मि/pkm, नि.स/ PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy/

**Sd/-**

(आर.सी.शर्मा)

**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /  
ITAT, Mumbai