

## Sec. 269SS triggered if huge cash received from director shown as loan even if it was utilized to set-up plant

**Summary – The High Court of Rajasthan in a recent case of Chandra Cement Ltd., (the Assessee) held that where assessee-company, engaged in setting up of cement plant, raised unsecured loan from Managing Director in cash in excess of Rs. 20,000, mere fact that said amount was utilised for payment of constructional activities directly would not alter character of deposits**

### Facts

- The assessee-company was setting up a mini cement plant. The Assessing Officer during the course of scrutiny noticed that balance-sheet of the assessee-company indicated 'unsecured loans' from the chairman-cum-Managing Director, namely 'R'. The assessee had received cash through the said Managing Director on various occasions which was exceeding Rs. 20,000.
- The Assessing Officer was of the, *prima facie*, view that the said cash deposits were in violation of provisions of section 269SS.
- Accordingly, a show-cause notice was issued. The assessee submitted reply, *inter alia*, contending that there was no banking facility in the radius of 25 Km. of the site of village. Further, no money had been accepted by the assessee-company in cash and the money had been directly disbursed for the sake of payments towards constructional activities or/and setting up of the Plant and that it was neither a loan nor a deposit.
- The Assessing Officer did not agree to the contentions raised by the assessee and imposed penalty under section 271D for violation of provisions of section 269SS.
- The Tribunal having accepted assessee's explanation, set aside the penalty order.
- On revenue's appeal:

### Held

- Section 269SS prohibits 'a person from taking or accepting from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if, *inter alia*, the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. twenty thousand or more', and failure to comply entails penalty to a sum equal to the amount of the loan or deposit. At the same time, section 273-B does leave discretion, if the person or the assessee, as the case may be, proves that there was reasonable cause for the said failure.
- Indisputably, the amount as noticed by the Assessing Officer was found credited in the books of account of the assessee company as having been received from time to time from 'R' who is said to be Chairman-cum- Managing Director of the assessee company.
- The main thrust of argument of the revenue is that admittedly when the amount has been found credited in the books of account of the assessee, that too by cash on various dates with no satisfactory explanation tendered, it leaves no manner of doubt that the amounts which were

received by the assessee from 'R' and shown as unsecured loan from 'R' are in the nature of deposit of money and once loan or deposit has been received by way of cash, section 269SS has been rightly invoked by the Assessing Officer in the instant case.

- There is a direct nexus of the money having flown from 'R' in the books of account of the assessee, may be towards payment of constructional activities of the assessee but it does not alter the character of deposit. The company after having received such amount was duty bound to repay back to the creditor which in the instant case may be a Director or otherwise and it is not the case of the assessee that the amount which was received from 'R' would remain with the company and was not repayable. The assessee company was duty bound to repay the said loan when demanded by 'R' or when company had sufficient liquidity.
- The Tribunal has also come to a finding that there is no agreement in between the two *i.e.* company as well as 'R', and since there is no agreement, it is neither loan nor deposit, the said finding of the Tribunal is wholly perverse. The conduct or the entry and flowing of funds is sufficient to prove that the amount was admittedly received by cash in the account of assessee as having been received from 'R' and found credited as an 'unsecured loan', proves that it was in the nature of a loan and certainly such loan having been received by cash, falls within the ambit of section 269SS.
- One cannot accept the argument raised by the assessee that 'R' being a semi literate and educated upto only 9th class, & earlier engaged in Kirana; entered in the field of Cement Trading and Distributorship, promoted this company and became Chairman-cum-Managing Director of the company, was not aware of the provisions of law, such an argument is worth rejection primarily since the instant appeals arose in a case of Limited Company and not 'R'. Provisions were brought into force from 1-4-1984 and such provisions were in force for almost 8 years and one cannot loose sight of the fact that over the years 'R' being in the business for years together, was not aware of the provisions of law although the presumption to know the law is to the contrary. Equally important is the fact that a Limited Company right from being formed is assisted by Chartered Accountant and Company Secretary, who are well qualified professionals and the justification tendered that 'R' being less literate, deserves no indulgence and it goes without saying that ignorance of law is no excuse.
- This finding of fact that the assessee as well as 'R' had common bank account in the same bank, remained unrebutted by the assessee as well, and if there is any direct nexus proved by the assessee that the amount as received from the Director was utilised towards payment to various labourers/contractors spent for constructional activities that does not improve the case of the assessee at all in these proceedings.
- Taking into consideration the above, the amount received by the assessee from 'R' was certainly in the nature of loan and one can not approve the manner in which the Tribunal has recorded a finding that it is neither loan nor deposit and it is perverse and contrary to the material on record. Admittedly in the audited accounts as well as the annual report of the assessee duly approved by its general body, indicate the money deposited by 'R' as 'unsecured loan'.

- The argument of the assessee that the amount in any case had to be paid to petty labourers and contractors in a remote place where the company has been established is beyond the purview of the question being raised by the revenue. Question in the instant case is the manner in which the amount has been received by the assessee from 'R', and not about nexus of the expenditure or the mode of payment to the ultimate labourers / contractors. The same mode could have been adopted by the assessee by taking the amount from 'R' by account payee cheques and withdrawn the same after having received from 'R' by cheques and for the purposes for which the claim is made by the assessee.
- Further, the revenue rightly submitted that the deposit by 'R' by cash to the extent of almost Rs.2.80 crore which is quite substantial, raises doubt as to availability of such substantial cash in his books of account and as to where such cash of almost Rs.2.80 crore was lying. Admittedly, it is claimed that 'R' deposited the said amount in the two assessment years through its proprietorship concern Chintpurni Enterprises and both Assessing Officer as well as the Commissioner (Appeals) have raised serious doubt about the source of the said amount and the assessee was required to prove in rebuttal and disclose the source of money having been received from 'R' and repeatedly they requested the assessee to produce the books of account of 'R' (Chintpurni Enterprises) but is a finding of fact recorded by Assessing Officer & confirmed by the Commissioner (Appeals) that such books were not produced.
- The Commissioner (Appeals) also noticed as a vital factor that neither the assessee nor 'R' was interested in producing the books of account of his proprietary concern and thus raised a serious doubt as to whether 'R' was in a position to have substantial cash in hand to the tune of almost Rs.2.80 crore in his books of account. The amount is not petty and one was certainly required to prove the source of the money as having been advanced by 'R'. Though, before the Tribunal revenue specifically raised issue about non-production of books of proprietary concern in one year and in subsequent year it was claimed to be fabricated or forged and even doubted the genuineness of such huge deposit of cash and though Tribunal has specifically observed the above argument but surprisingly has not at all commented or give any finding on this vital issue.
- In view of above, the order of Tribunal is not sustainable and the penalty, on the facts and circumstances, was rightly imposed by the Assessing Officer and confirmed by the Commissioner (Appeals).
- Consequently, the revenue's appeal is allowed.