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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 1178/2017, C.M. APPL.46756/2017
ASIAN CONSOLIDATED INDUSTRIES LTD. FORMERLY
TRANS ASIA PACKAGING LTD.) Appellant
Through : Sh. Ved Jain and Sh. Pranjal Srivastava,
Advocates.

versus

DY. COMMISSIONER OF INCOME TAX -CIRCLE 3(2)
..... Respondent
Through : Sh. Sanjay Kumar, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

% **ORDER**
21.12.2017

Admit.

Issue notice. Sh. Sanjay Kumar, Standing Counsel accepts
notice.

With consent of counsel, the appeal was heard on the merits.
The following issue arises for consideration:

*“Whether having regard to the facts and circumstances,
the imposition of penalty of ₹1,06,44,500/- under Section
271D of the Income Tax Act, 1961 was justified in law?”*

The assessee's returns for AY 1992-93 got processed by
scrutiny order under 143(3) of the Income Tax Act, 1961 [hereafter
“the 1961 Act”] on 06.10.1995. In the course of the assessment, the
Assessing Officer (AO) was of the opinion that the sum of

₹61,00,520/- had been received by the assessee contrary to Section 269SS. A proposal was issued to the Deputy Commissioner of Income Tax (DCIT) for proceeding after imposition of penalty under 271D of the 1961 Act.

After consideration of the materials and the documents, the DCIT accepted the sum and confirmed the penalty which was levied. Upon appeal, the CIT (Appeals) was of the opinion that the amount accepted was ₹1,06,44,500/- and that there was a error. A Show Cause Notice was issued for enhancement of the amount and after considering the submissions of the assessee, the penalty proposed under Section 271D was levied. The Income Tax Appellate Tribunal (ITAT) has, by the impugned order, rejected the assessee's contentions. The discussion by it on the merits of the appeal *vis-a-vis* the penalty, in the impugned order dated 14.07.2017 reads as follows:

“6. We have heard both the parties and perused the records available with us. We find that assessee had accepted cash amounting to Rs. 1,06,44,500/- from M/s Asian Consolidated Ltd., M/s Asian Closures Ltd, and M/s Rajasthan Breweries Ltd. We further note that as the amounts received in cash and attracting the penal provisions of section 271D are much more than the amount of penalty levied by the DCIT. Ld. CIT(A) has issued a show cause notice dated 1.10.1996 to the assessee company as to why the penalty may not be enhanced and in response to thereto, the Ld. Counsel of the assessee wrote a letter to the AO "to furnish details of the amount of Rs.1,06,44,500/- and copy thereof was endorsed to the Ld. CIT(A) and informed therein that necessary information was available in the books of account of the company. Ld. Counsel for the assessee

also pointed out that the various cash receipts in excess of the limit provided u/s 269(SS) may be taken from the books of accounts and if there is any difference, such difference may be pointed and discussed. Ld. CIT(A) vide his letter dated 17.10.1996 informed the assessee that the details are available with the assessee company and information in respect of such details may be furnished irrespective of whether such cash receipts are treated deposits/ loans u/s. 269(SS) or not. Instead of furnishing the details from the books of accounts, the assessee has adopted delaying tactics by writing letter on one pretext or the other. Therefore, the Ld. CIT(A,) has rightly held that assessee's counsel is not interested in bring the facts on record and in the absence of the same, the figure of cash deposit of Rs.1,06,44,500/- provided by the AO was rightly accepted by the Ld. CIT(A) and the penalty was rightly enhanced to Rs.1,06,44,500/-, which does not need any interference on our part. The case laws relied upon by the ld. AR of the assessee are distinguished to the facts of the present case and therefore, the same are not applicable in case in hand. In view of the above, we uphold the order of the Ld. CIT(A) of enhancing the penalty in dispute and reject the grounds taken by the assessee.”

The assessee contends that the ITAT did not take into account the fact that the amounts could not be treated as “cash received” in order to attract penalty under 271D for violation of 269(SS). It was stated that in similar situations, the cash received from sister concerns in a running account were held not to constitute as an infraction under Section 269(SS). In this regard, reliance is placed on ITAT’s order in *Hindustan Agencies Pvt. Ltd. v. Addl. CIT* [ITA/3387/Del/2014, decided on 20.01.2016]. It is urged more crucially that the substantive

assessment order [which had been previously confirmed by the CIT(A)] had in fact been set-aside by the ITAT in its order dated 19.06.2015 when the ITAT decided to consolidate the batch of appeals for all the relevant years, including AY 1992-93 – *Asian Consolidated Industries Ltd.* (which was previously known as *Asian Closures Ltd.*) ITA 4013/Del/2013 – AY 1992-93. A copy of that order has been placed on the record. The said order, we notice states as follows:

“10. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the department passed the ex-parte order during the period of liquidation and the ld. CIT-I, Delhi while deciding the petitions of the assessee u/s 264 of the Act for the assessment years 1996-97 to 2001-02 vide separate orders each dated 11.03.2015 set aside the issues to the file of the AO for making assessment de-novo after giving reasonable opportunity of being heard to the assessee. We, therefore, considering the totality of the facts deem it appropriate to remand all the cases under consideration to the file of the AO to be decided expeditiously afresh, in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to cooperate and not seek undue or unwarranted adjournments.”

Learned counsel for the Revenue sought to urge that the penalty imposed under Section 271D of the 1961 Act had to be maintained regarding having regard to Section 269(SS) which mandates the amounts to be treated distinctly.

This Court is of the opinion that the ITAT completely ignored its previous order which had the effect of restoring back to the AO the matter for the relevant AYs for fresh assessment. The judgment of the Supreme Court in *CIT v. M/s. Jai Laxmi Rice Mills* 2015 379 ITR 521 is authority for the proposition that after remand, the matter is at large and that the AO has to apply his mind afresh to the materials and circumstances based on which the appropriate provision can be sought recourse to. In these circumstances, the Revenue's contention that the penalty amount acquired a distinct character – and a life, as it were, other than the assessment, cannot be sustained. The impugned order is accordingly set-aside. It is, of course, open to the AO to consider all the materials afresh and pass appropriate orders, having regard to the current position, in accordance with law on the merits as to the valuation, if any, under Section 269(SS). The question of law is accordingly answered in favour of the assessee and against the Revenue. The appeal is accordingly allowed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

DECEMBER 21, 2017/ajk