HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 20 of 2015

Additional Commissioner Of Income Tax , Range-1, Aayakar Bhawan, Civil Lines, Raipur, Chhattisgarh

---- Appellant

Versus

Keshav Singh, M I G- 6, Mahaveer Nagar, New Purena Raipur, Chhattisgarh

----Respondent

For Appellant:- Smt Naushina Afrin Ali, Advocate
For Respondent:- None

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice

14/12/2015

1. The present appeal arises from order dated 18.12.2014 in ITA No.38/BLPR/2011 relating to the assessment year 2006-07.

2. The Assessing officer levied a penalty of Rs.18,85,683/- against the Respondent under Section 271 D of the Income Tax Act (hereinafter referred to as 'the Act') for violation of the provision of Section 269 SS by accepting loan in cash above Rs.20,000/-.

3. Learned Counsel for the Appellant submitted that admittedly the loan of Rs.18,85,683/- was not transferred to the account of the Respondent by those who may have loaned it and therefore the provision of Section 269 SS stood attracted leading to imposition of penalty under Section 271 D of the Act. Reference in this regard was also placed on Rule 6 DD of the Income Tax Rules, 1961. It was thus submitted that if statutory non-compliance was evident and not in dispute, the CIT (Appeals) should not have cancelled the

penalty amount and the Tribunal should not have affirmed it.

4. We have considered the submissions and do not find that the appeal raises any question of law for our consideration. The loans in question by four lenders were directly paid to the Excise Department by way of pay orders and reflected in the book of account of the lender. The repayment of the loan to the lenders by the Respondent was also by way of cheque in subsequent years. The Assessing Officer opined that there was no business exigency or urgency. Contrary to the same, CIT (Appeals) by a detailed consideration, arrived at a finding of fact that the transaction was bona fide and genuine, made on account of business urgency affirmed by the Tribunal. The lenders were also existing Income Tax assessees. The order of the CIT (Appeals) is well reasoned and discussed including the reference to the CBDT circular 387 dated 6.7.1984 and the purpose of Section 273 D of the Act.

5. We find no reason to interfere with the concurrent finding of facts by two forums to examine if the loan was not genuine or that it was a sham transaction on basis of the very same materials merely because there may be a possibility of another conclusion.

6. In (2002) 6 Supreme Court Cases, 259 (Assistant Director of Inspection Investigation vs. A.B. Shanthi) referred to by the Tribunal, it was observed in paragraph – 8 as follows:-

> "8. The contention of the appellant's counsel has no force. The object of introducing Section 269-SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender

> also to manipulate his records later to suit the plea of the taxpayer. The main object of Section 269-SS was to curb this menace. As regards the tax legislations, it is a policy matter, and it is for Parliament to decide in which manner the legislation should be made. Of course, it should stand the test of constitutional validity."

7. There is no merit in the appeal. It is dismissed.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Priya