IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No. 51 of 2015

The Commissioner of Income Tax
Chennai. ... Appellant

Vs.

Mr.D.Muralikrishna ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order dated 17.07.2014 made in I.T.A.No. 626/Mds/2014 on the file of the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai, for the assessment year 2010-2011.

against the Order of the Commissioner of Income Tax (Appeals) VII, Chennai 34, dated 26.11.2013 in ITA No.952/13-14-GIR No/PAN/TAN-AHAPM 3377K for the Assessment Year 2010-2011.

For Appellant : Mrs.Hema Muralikrishnan

JUDGMENT

(DELIVERED BY R.KARUPPIAH, J.)

This Tax Case (Appeal) is filed by the revenue as against the order dated 17.07.2014 made in I.T.A.No. 626/Mds/2014 on the file of the Income Tax Appellate Tribunal raising the following substantial questions of law:

> "i) Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the penalty levied u/s. 271D especially when the assessee had accepted the cash loan in violation of Sec. 269 SS and no reasonable cause was shown?
>
> ii) Is not the finding of the Tribunal bad by deleting the penalty levied u/s. 271D especially when no reasonable cause has been

shown for accepting the loans in cash?

iii) Whether the finding of the Tribunal is proper especially when Sec. 273 B clearly states that no penalty is imposable on the assessee if he proves that there was a reasonable cause and the Tribunal on a wrong notion states that the transaction is genuine especially when the Section does not speak anything about the genuineness of the transaction?”

2. The brief facts of the case are as follows:-

The respondent/assessee, who is an individual trading in leather, filed the return of income on 23.09.2010. Assessment was completed under Section 143(3) of the Act on 28.11.2011. Later, during the course of scrutiny assessment proceedings, the Assessing Officer required the assessee to furnish sources of purchase of property (flat) worth Rs.90,16,528/-. The assessee furnished the details of the sources and the Assessing Officer accepted the sources furnished by the assessee. But, the Assessing Officer found that the assessee borrowed a sum of Rs.20,00,000/- in cash from his family members and it is in violation of Section 269SS of the Act. The Assessing Officer informed the above said violation to the Additional Commissioner of Income Tax. The Additional Commissioner of Income Tax issued show cause notice to the assessee as to why the penalty under Section 271D of the Act should not be levied for violation of Section 269 SS of the Act for accepting loan in cash instead of account payee cheque/draft. The representative of the assessee submitted his explanation as follows:-

“The assessee had to take possession of the flat on or before a particular date fixed by the builder. In order to avoid the interest charge on the outstanding amount, he was under pressure and had to arrange the outstanding amount within the short period of time. He did not have enough time to get the payments through account payee cheque or draft from the lenders and make the payments after realization. The assessee's intention was to take possession of flat within time fixed.”

3. The Authorised representative also produced the confirmation letter dated 12.06.2012 obtained from the creditors to prove that the loans were genuine. The Assistant Commissioner has not doubted the genuineness of the transaction (ie.,) the appellant received the loans from his relatives for purchase of the property. But, the Assistant Commissioner came to a conclusion that the assessee has not

given any sufficient cause for accepting the loans in cash. Therefore, the Assessing Officer levied a penalty of Rs.20,00,000/- as per the provision of Section 271D of the Income Tax Act for violation of Section 269SS of the Act.

4. Challenging the above said order of penalty levied under Section 271D of the Act, the assessee preferred an Appeal before the Commissioner of Income Tax (Appeals) and the CIT (Appeals) considered the submission of both sides and also relied on three decisions reported in (i) CIT Vs Bhagwati Prasad Bajoria (HUF) (2003) 263 ITR 487 (Guw.); (ii) CIT Vs. Manoj Lalwani (2003) 260 ITR 590 (Raj.); and (iii) CIT Vs. Saini Medical Store (2005) 276 ITR 79 (P & H), and finally accepted the explanation given by the assessee as genuine and therefore allowed the appeal and deleted the penalty of Rs.20,00,000/- levied under Section 271D of the Income Tax Act.

5. Aggrieved by the above said order of the CIT (Appeals), the revenue preferred an Appeal before the Income Tax Appellate Tribunal, 'D' Bench, Chennai. The Tribunal concurred with the findings of the CIT (Appeals) and dismissed the appeal filed by the revenue. The relevant portion of the order passed by the Tribunal is extracted as follows:-

> "7. In the case on hand, assessee has purchased house property which is not in dispute, assessee has obtained cash loans from mother-in-law, brother-in-law and co-brother which is also not in dispute. The transactions are genuine and the assessee was compelled to take cash loans to clear off outstanding amounts payable to the builder and therefore in such circumstances, it cannot be said that there is no reasonable cause in accepting cash loans from family members. In view of the above decision of the jurisdictional High Court, we hold that there is a reasonable cause in accepting cash loans. In such circumstances, penalty under Section 271D is not exigible. Thus, we sustain the order of the Commissioner of Income Tax (Appeals) and reject the grounds of appeal raised by the Revenue."

6. Aggrieved over the above said order of the Tribunal, the Revenue preferred this Appeal. The learned counsel appearing for the revenue mainly contended that the assessee had not taken loan in cash on a single day but received the loan amount over a span of 40 days, which was more than sufficient to get the above said loan amount through banking channel for making payment for purchase the property.

Further, the learned counsel pointed out that the assessee has not given any specific reason for accepting the money in cash and therefore, the assessee is liable to pay penalty.

7. We have heard the learned standing counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

8. Admittedly in the instant case the assessee purchased the property worth about Rs.90,16,528/- and all the authorities below accepted that the sources furnished by the assessee are genuine.

9. Before adverting to the law on the point, it is appropriate to set out the scope and ambit of Section 269SS of the Act and the applicability of Section 271D of the Act. Section 269SS prohibits acceptance of any loan or deposit exceeding Rs.20,000/- otherwise than by way of account payee cheque or bank draft. If Section 269SS is contravened, the department is empowered to invoke Section 271D of Act and impose penalty equal to the loan amount. However, Section 273B of the Act postulates that if the assessee shows reasonable cause, penalty under Section 271D need not be imposed.

10. Keeping in mind the said principle, let us analyse as to whether the assessee has shown reasonable cause for deletion of penalty.

11. The CIT (Appeals) and Tribunal relied on the following three decisions:-

(i) CIT Vs Bhagwati Prasad Bajoria (HUF) (2003) 263 ITR 487 (Guw.);
(ii) CIT Vs. Manoj Lalwani (2003) 260 ITR 590 (Raj.); and
(iii) CIT Vs. Saini Medical Store (2005) 276 ITR 79 (P & H),

and accepted the explanation given by the assessee for receiving the loan in cash and finally came to the conclusion that there was a reasonable cause for accepting the same. For better appreciation, the relevant portions of three decisions are extracted as follows:-

> CIT Vs Bhagwati Prasad Bajoria (HUF) (2003) 263 ITR 487 (Guw.)
>
> "The facts which emerged in the case are that as the result of advancement of the loan by Umadatta Jhunjunwala on three different dates of assessee has executed the promissory notes in favour of her. The

transaction of loan has found place in the books of accounts of the assessee as well as the lender of the loan. None of the authorities have reached the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It was held that the deletion of penalty u/s 271 D was justified."

CIT Vs Manoj Lalwani (2003) 260 ITR 590 (Raj.)

"U/s 273B a judicial discretion is left with the assessing authority not to levy a penalty u/s 271D if the authority is satisfied that there was a reasonable cause for not complying with the provisions of Sec. 269SS of the Act. In the present case, the Tribunal had found that the assessee was an exporter and was in urgent need of the money for complying with the time bound supplies and, therefore, he took a loan of Rs.2,50,000/- from his brother-in-law. Out of the loan so taken, an amount of Rs.2,45,000/- was immediately deposited in the bank, which indicated that the amount of loan, in fact, was received by him. It was only to meet the emergent need of time bound supplies that the loan was taken as he did not have sufficient time and funds and that there was no intention to violate the provisions of Sec. 269SS. The Tribunal had acted in accordance with law in waiving the penalty."

CIT Vs Saini Medical Store (2005) 276 ITR 79 (P & H)

"A combined reading of the provisions of sections 271D and 273B of the I.T. Act, makes it clear that if the assessee shows reasonable cause for the failure to comply with any provision referred to therein, the penalty for its violation shall not be imposable on the assessee. In the present case, the CIT(A) in his order dated 18.01.1999, whereby the penalty u/s 271D of the Act was deleted, had accepted the version given by the assessee that violation of the provisions of the Act was under a bonafide belief of the assessee and the same was not with any intention to avoid or evade the tax. His findings have been confirmed in appeal by the Tribunal and hence the appeal is dismissed."

The scope and rationale behind the introduction of this section was explained by the Board in Circular No.387, dated 06.07.1984 which reads as under:
"Unaccounted cash found in the course of searches carried out by the Income Tax Department is often explained by tax payers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into books of account in the form of such loans and deposits, and tax payers are also able to get confirmatory letters from such persons in support of their explanation.

With a view to countering this device, which enables tax payers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS in the Income Tax Act debarring persons from taking or accepting, after 30th June 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs.10,000/- or more......."

In this case, the loan transaction with the relatives were not doubled and only the mode of transaction was questioned as it was in violation of Sec. 269SS of the Act. Considering the circumstances of the transaction, I am of the opinion that the breach is of venial in nature and reliance is placed on the decision in the case of CIT Vs. Parmanand (2004) 266 ITR 255 Delhi. The decision reads as under:

"The Tribunal's order shows that the conclusion of the Tribunal that there was reasonable cause in not strictly complying with the provisions of Sec. 269 SS of the Act is based on relevant factors. We find it difficult to hold that the view taken by the Tribunal is either perverse or so irrational that no reasonable person, on the given facts, would have come to the same conclusion. The findings recorded by the Tribunal are essentially factual giving rise to no question of law much less a substantial question of law.

The appeal is accordingly dismissed."

In find, the appeal of the appellant is fully allowed and the penalty levied u/s 271D of the Act at Rs.20,00,000/- is hereby deleted."

12. Under similar circumstances, wherein an assessee received loan of Rs.20,99,393/- from her father-in-law, this Court in Commissioner of Income – Tax Vs. Smt.M.Yesodha reported in (2013) 351 ITR 265 (Mad) held that since transaction is genuine and source of such transaction has been disclosed, penalty could not be imposed. The relevant portion of the decision is extracted as follows:-

"10. The contention of the Revenue is that the amount received by the assessee from her father-in-law has to be treated only as a loan and it is a loan, then the assessee is liable to pay penalty under Section 271D of the Income-tax Act. Whether it is a loan or other transaction, still the other provision, namely, Section 273B of the Income-tax Act, comes to the rescue of the assessee, if she able to show reasonable cause for avoiding penalty under Section 271D of the Income-tax Act. The Tribunal has rightly found that the transaction between the daughter-in-law and the father-in-law is a reasonable transaction and a genuine one owing to the urgent necessity of money to be paid to the seller. We find that this would amount to reasonable cause shown by the assessee to avoid penalty under Section 271D of the Income-tax Act.

11. Referring to the decision CIT V. Kundrathur Finance and Chit Co. reported in (2006) 283 ITR 329 (Mad), this Court in the decision CIT v. Lakshmi Trust Co., reported in (2008) 303 ITR 99 (Mad), held as follows (page 101):

"In the instant case, the Commissioner of Income -tax (Appeals) and the Appellate Tribunal found on the facts that the transactions were genuine and the identity of the lenders was also satisfied. The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on the facts, following the decision of this Court in CIT v. Ratna Agencies (2006) 284 ITR 609, wherein it was held that the finding recorded by the Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this Court to interfere with such a finding of fact."

12. The Tribunal, referring to the decision of this Court CIT v. Lakshmi Trust Co, reported in (2008) 303 ITR 99 (Mad), has rightly allowed the appeal. We do not find any error or infirmity in the order of the Tribunal to warrant interference. Accordingly, the substantial question of law is answered in favour of the assessee and this tax case (appeal) stands dismissed. No costs."

13. In the case on hand, the assessee has purchased a flat. The said transaction is not disputed. That apart, the sources from whom he obtained loan, namely, the mother-in-law, brother-in-law and co-brother, is also not disputed by the department. The main plea of the assessee before the authorities below is that he had to take possession of the flat on or before a particular date fixed by the builder and he did not have enough time to get payments through

account payee cheque or drafts.

14. Under such circumstances, in our considered view, the Tribunal and the CIT (Appeals) were justified in holding that assessee has shown reasonable cause for deletion of penalty. For the reasons aforesaid, this appeal is dismissed and we find no question of law warranting consideration. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To
1.The Income Tax Appellate Tribunal,
Madras “D” Bench, Chennai.

2.The Commissioner of Income Tax(Appeal) VII, Chennai 34

3.The Asst.Registrar
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1 cc to Mr.T.Ravi Kumar ,Advocate, SR.No.9665

T.C.(A).No. 51 of 2015

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