

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

TC (A) .Nos.291, 292 and 325 of 2015

TCA.Nos.291 and 292 of 2015

The Commissioner of Income Tax
Pondicherry.Appellant/Respondent

v.

Sri.M.RamakrishnanRespondent/Appellant

TCA.No.325 of 2015

Sri.M.RamakrishnanAppellant/Appellant

v.

The Joint Commissioner of Income Tax
Pondicherry Range, Pondicherry.Respondent/Respondent

TC (A) Nos. 291, 292 and 325 of 2015 :

Prayers :- Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai dated 27.10.2014 passed in ITA.Nos.420, 421 and 419/Mds/2014 respectively, against the order of the Commissioner of Income Tax (Appeals) - VI, Chennai, dated 30.12.2013 and made in ITA Nos. 645, 647 and 646/13-14/A-VI respectively against the order of the Joint Commissioner of Income Tax, Puducherry Range, Puducherry, dated 29.08.2012 and made in PAN No.AAIPR430TF (C.R.Nos.34/JCIT/PDY/271E/2012-13, 34/JCIT/PDY/271E/2012-13 and 34/JCIT/PDY/271D/2012-13 respectively) for the Assessment year 2008-2009, 2009-10 and 2008-09 respectively.

TCA.Nos.291 and 292 of 2015

For Appellant	:	Mr.J.Narayanasamy Sr. Standing Counsel for I.T. Department
For Respondent	:	Mrs.Pushya Seetharaman, SC for M/s.J.Sreevidhya

TCA.No.325 of 2015

For Appellant	:	Mrs.Pushya Seetharaman, SC for M/s.J.Sreevidhya
For Respondent	:	Mr.J.Narayanasamy Sr. Standing Counsel for I.T. Department

COMMON JUDGMENT
(Delivered by K.B.K.VASUKI, J)

The assessee is the appellant herein.

2. Consequent to a survey conducted in the premises of one A.Kannan who was running an unlicensed financing business in the name of Vadamalayaan Finance, certain accounts and supporting documents were impounded. As per the books of accounts in the office of Kannan it was found out that the assessee received loan of Rs.20,00,000/- and repaid the same in cash. Following the same, the assessee was issued with a show cause notice under Section 271D r/w.269(ss) of the Income Tax Act and after receipt of notice dated 21.02.2012 and similar show cause notice dated 06.08.2012, the assessee filed a letter alongwith copies of letters of income and statement for the assessment years 2008-2009 and 2009-2010 wherein the assessee accepted the receipt of amount and repayment of the same by way of cash. A statement was also recorded from A.Kannan to the effect that he has the practice of lending and receiving back in cash and do not lend or receive back in cheque or draft from anybody. The assessee also filed an affidavit stating that the amount was received and repaid by way of cash. Based on the same, the Joint Commissioner, Pondicherry levied penalty of equal amount in contravention of section 269(ss) for accepting loan in cash and under section 260(T) for repayment of loan in cash. Aggrieved by the order of penalty, the assessee filed an appeal before the Commissioner of

Income Tax Under Section 271(D) of the Income Tax Act.

3. One of the main grounds raised before the Commissioner of Appeals is that he was not served with the copy of the statement recorded from A.Kannan and copies of the materials seized from him and the copy of the reference received from the Income Tax Officer, Pondicherry, based on which the penalty was levied and he was not given any opportunity of cross examining P.Kannan and the same amounts to violation of principles of natural justice.

4. The commissioner of appeals vide his order dated 30.12.2013 decided the grounds raised by the appellant and dismissed the appeal filed by the assessee, which reads as follows :-

"7. Decision and grounds of determination

All the grounds of the appeal raised are against the action of the AO in levying penalty of Rs.20,00,000/- u/s.271D of the IT Act. I have considered the assessee's submissions as well as the findings given in the order of penalty. The contention of the appellant that he had received Rs.20 lakhs in its burden of proving with an evidence regarding its plea of reasonable cause to obtain the loan in cash. The insistence of the lender to advance loan in cash cannot be treated as reasonable cause for excusing the appellant from levy of penalty u/s.271D of the IT Act. Therefore, under the facts and circumstances of the case, I am fully in agreement with the view of the AO that penalty of Rs.20,00,000/- is leviable and uphold the action of the AO in levying penalty of Rs.20,00,000/- u/s.271D of the IT Act. Hence, all the grounds raised by the appellant are dismissed."

5. Aggrieved against the same, the appellant/assessee preferred three appeal for the assessment year 2008-2009 and for the assessment years 2008-2009 and 2009-2010 before the Income Tax Appellate Tribunal. Before the Tribunal, the appellant/assessee reiterated the same grounds as raised before the Commissioner of Appeals. The Tribunal has upheld the order of the Commissioner of Income Tax (Appeals) and confirmed the levy of penalty under Section 271(D) on the ground that the different reasons given by the assessee before the different authorities for accepting Rs.20lakh in cash are not acceptable and the different reasons purforth by the assessee were not substantiated by any document and no explanation was offered by the assessee for his failure to produce any document and the assessee is unable to give any reason for not furnishing the bank statement

and copy of the demand notice from the Commercial Tax Office before the Assessing Officer and the assessee has been taking consistently inconsistent stand before different authorities and the explanation put forth are after thought and hence cannot be believed. The Income Tax Appellate Tribunal further deleted the penalty levied under Section 271E by accepting the contention of the assessee, that he was constrained to repay the loan account as per whims and fancies of A.Kannan and the repayment of loan amount by way of cash is out of compelling reasons. The Tribunal accordingly dismissed the appeal in ITA.No.419/Mds/2014 and allowed the appeals in ITA.Nos.420 and 421/Mds/2014. Aggrieved against the dismissal of ITA.No.419/Mds/2014 thereby confirming the levy of penalty under Section 271D, the assessee has approached this Court by filing TCA.No.325 of 2015. Aggrieved against the order setting aside the penalty under Section 271E for the assessment year 2008-2009 and 2009-2010, the Revenue has come forward with two Appeals in TCA.Nos.291 and 292 of 2015 before this Court.

6.The Substantial questions of law that arise for consideration in all the three appeals are as follows :

TCA.Nos.291 and 292

Whether on the facts and in the circumstances of the case the tribunal was right in holding that insistence of financier to repay the loan in cash is a compelling circumstances and is a reasonable cause for transacting the loan transaction in cash and thereby deleting the levy of penalty under Section 271E.

TCA.No.325 of 2015

1.Whether on the facts and circumstances of the case, the Tribunal was right in confirming the penalty under Section 271D which was clearly imposed in violation of principles of natural justice based on statements recorded behind the back of the appellant?

2.Whether on the facts and circumstances of the case the Tribunal was right in confirming the penalty u/s.271D after recording that the financier insisted on granting loans and receiving back only in cash?

7.Heard the rival submissions made on both sides and perused the records.

8.Admittedly, the assessee received Rs.20Lakhs from and repaid the same by way of cash to one Kannan, who was carrying on unlicensed financial activities. The assessee filed his return for the relevant, assessment years for the cash loan transaction and

repayment after receipt of notice under Section 271D for the penalty proceedings.

9.As the loan transaction was disclosed in the accounts book seized from one A.Kannan in the course of investigation held in his premises, statement was recorded from him and records were seized from him. Statement recorded from Kannan is to the effect that he was in the practice of giving the loan and receiving the loan only in cash and he does not lend or receive back either by way of cheque or draft from anybody. That is what the explanation given by the assessee in his statement before the Joint Commissioner, Pondicherry. It may be true that the assessee come forward with regarding the purpose for which the amount was received and regarding the nature of transaction between A.Kannan and himself, different explanation before different authorities. It is his stand before the original authority that the amount was received in the land dealing and the same is again modified by stating that it was a loan transaction for personal purpose. The contention raised before the Commissioner of Appeals is that he received the same by way of advance for land dealing and as the dealing could not be finalised, the same was agreed to be refunded in installments and accordingly refunded. Whereas, the explanation offered before the Tribunal is that the assessee entered into a deal with Kannan for sale of land to meet the tax demand of a firm in which he is a partner. The assessee has also in support of such contention produced bank statement and copy of demand notice from the Commercial Tax Office. While the original authority and the Commissioner of Appeals did not accept his explanation regarding urgency purpose for which the amount was received in cash and the compelling reasons for which the same was repaid in cash, the Tribunal was not inclined to accept the reason for receiving the amount in cash, but accepted the repayment of the same in cash, as out of compulsion by the financier and upheld the penalty under Section 271D and set aside the penalty under section 271E.

10.Insofar as the order setting aside the penalty under Section 271E, is concerned we do agree with the findings rendered by the Tribunal. Having regard to the statement of the financier A.Kannan. The Tribunal, after having duly appreciated the difficulty faced by the borrower in the hands of the financier and their compulsion to accept the terms imposed by the money lender, accepted the explanation and such findings need not be interfered by us and the same disentitles the Revenue to get any order in their appeals in TCA.Nos.291 and 292 of 2015.

11. Insofar as the other appeal TCA.No.325 of 2015 filed by the assessee is concerned, one consistent stand taken by the assessee before the authorities below is that the assessee was deprived of valuable opportunity to defend his case for want of copy of the statement given by the financier Kannan and the copy of the materials seized from him and without giving him an opportunity to cross examine Kannan. The impugned order of the authorities below is based on two reasons (1) the assessee has not come forward with consistent case and (2) no reasonable cause is shown for receiving the loan in cash. As rightly argued by the learned counsel for the appellant/assessee, the authorities below before arriving at such conclusion ought to have considered the explanation offered by the assessee and the documents based on which the same was made. The Commissioner of Appeals and the Tribunal have also failed to consider the documents such as, bank statement and the copy of the notice received from the CTO for explaining the urgency for receiving the amount in cash produced at the later stage in proper perspective. The Division Bench of this Court having one of us in the case in TCA.No.916 of 2004 dated 17.09.2004 - M/s.The Ramco Cements Ltd V. Deputy Commissioner of Income Tax, Special Range, Madurai have clearly upheld the right of the parties to produce additional documents and to raise additional grounds before the appellate authority. The Commissioner of Appeals as well the Appellate Tribunal though allowed the party to raise additional ground regarding the urgency for receiving the amount in cash and also to produce additional documents, have not duly applied their mind to ascertain the genuineness and relevancy of the same in deciding the issue in hand. The authorities below have also omitted to consider that there is serious violation of principles of natural justice in not allowing the assessee to have the copy of the statement of financier Kannan and the documents seized from him and to cross examine him. Such failure on the part of the authorities below in our considered view, has deprived the assessee of his valuable opportunity to satisfactorily prove the reasonable cause for receiving the amount in cash and to defend his case properly and effectively. As such, we feel that it is a fit case, to give the assessee such an opportunity and for such purpose, set aside the impugned order made in Appeal.No.419/Mds/2014 and to remand the same for fresh disposal, after giving the copies of the relevant documents to the assessee and after giving him an opportunity to cross examine the witness and after duly considering the additional grounds raised and additional documents produced by the assessee and the substantial questions of law are accordingly decided in favour of the assessee.

12.In the result, TCA.Nos.291 and 292 of 2015 are dismissed TCA.No.325 of 2015 is allowed by setting aside the impugned order and the Appeal No.419/Mds/2014 is remanded back to the Assessing Officer for fresh disposal on merits and in accordance with law and in terms of the directions contained in this order. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
A Bench, Chennai.

2.The Commissioner of Income Tax (Appeals) -IV,
121, Mahatma Gandhi Road,
Chennai - 34.

3.The Joint Commissioner of Income Tax
Pondicherry Range, Pondicherry.

4.The Commissioner of Income Tax,
Pondicherry.

5.The Secretary,
Central Board of Direct Taxes,
New Delhi.

2 CCs to M/s.J.Sreevidhya, Advocate SR.No. 32886, 32887

2 CCs to Mr.J.Narayanasamy, Sr. Standing Counsel for I.T. Department
SR.No. 32889, 32890

TC(A).Nos.291, 292 and 325 of 2015

GR (CO)

PSI (25.08.2015)