IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.8.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

T.C.(A) No.1193 of 2007

M/s.Khizaria Leathers,
No.829/1, Periyar E.V.R. High Road,
Kilpauk, Chennai 600 010. Appellant

vs.

The Deputy Commissioner of Income Tax,
Special Range III, Chennai. Respondent

Tax Case (Appeal) against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A.No.2350/MDS/1995, dated 19.10.2004.

For appellant : Mr.S.Sridhar

For Respondent : Mrs.R.Hemalatha for
Mr.T.R.Senthilkumar

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This Tax Case Appeal filed by the assessee has been admitted on the following questions of law:

"1. Whether the Tribunal is correct in concluding that the levy of penalty under Section 271D of the

Act in the assessment year 1992-93 was justified on the facts and in the circumstances of the case?

2. Whether the Tribunal is correct in concluding that the provisions of Section 269SS of the Act were attracted to the transactions under consideration with a view to levy penalty under Section 271D of the Act?

3. Whether the Tribunal is correct in concluding that there was no reasonable cause existed/made out in terms of Section 273B of the Act with a view to consider the dropping/cancelling of the said penalty?"

2. During the course of assessment proceedings, relating to the assessment year 1992-93, it was found that the assessee had received the following cash payments:-

"15.4.91	20,000	Cash
14.5.91	45,000	Cash
27.8.91	75,000	Cash
11.9.91	44,917	Compulsory Deposit

19.10.91	75,000	Cash
18.12.91	1,00,000	Cash
8.2.92	35,000	Cash
	1,25,000	Cash"

3. Therefore, on the ground that the assessee had violated the provisions of section 269SS of the Act, penalty proceedings under section 271D were initiated The appellant gave its submissions. Thereafter, the assessing officer passed an order dated 30.6.1994, imposing a penalty equivalent to 100% of the cash receipts.

4. The appeal filed by the appellant was dismissed by the Commissioner of Income Tax (Appeals) III by order dated 23.8.1995. A further appeal filed by the appellant was dismissed by the Tribunal, by order dated 19.10.2004. Therefore, the assessee is on appeal.

5. On the second question as to whether the provisions of section 269SS were attracted to the transactions under consideration at all, the contention of the learned counsel for the assessee is that section 269SS covers only cases of receipts of money by way of loan or deposit, in excess of the amount stipulated therein. It appears that section 269SS, as it originally stood, covered only two types of receipts either by way of loan or by way of deposit. But, by an

amendment, introduced in 2014, the expression "any specified sum" is also included alongwith the words "loan or deposit".

6. The original authority as well as the first appellate authority recorded a factual finding that the amounts received by the appellant in excess of the specified sum, were indicated even in their balance sheet as "unsecured loan". Once it is found that cash received by the appellant on various dates were accounted in the balance sheet, as unsecured loan, it is not possible for us to come to any conclusion other than the conclusion that the assessing officer, the first appellate authority and the Tribunal have reached to hold that the provisions of section 269SS are attracted. Hence, the second question of law is answered against the assessee in view of the factual finding that the assessee themselves have accounted the receipts as "unsecured loan" in their balance sheet.

7. On the question of penalty, Mr.S.Sridhar, learned counsel for the assessee contended vehemently that under section 273B, the authorities are empowered not to levy penalty, if the assessee is able to prove that there was a reasonable cause for the failure to comply with the provisions of section 269SS. In support of his contention that the moment the assessee proves the existence of a reasonable cause,

the authorities are obliged to exercise a discretion not to levy penalty under section 271D, the learned counsel for the appellant relied upon the following decisions:

1) COMMISSIONER OF INCOME TAX v. T.R.RENGARAJAN ((2005) 279 ITR 587

2) COMMISSIONER OF INCOME TAX v. RATNA AGENCIES ((2006) 284 ITR 609

3) COMMISSIONER OF INCOME TAX v. LAKSHMI TRUST CO. ((2008) 303 ITR 99

4) COMMISSIONER OF INCOME TAX v. KUNDRATHUR FINANCE & CHIT CO. ((2006) 283 ITR 329

5) COMMISSIONER OF INCOME TAX v. KAILASH TRIPLE STERLIZED WATER (CHENNAI) (P) LTD ((2008) 215 CTR 198

6) COMMISSIONER OF INCOME TAX v. BALAJI TRADERS ((2008) 303 ITR 312

7) COMMISSIONER OF INCOME TAX v. M.YESODHA ((2013) 351 ITR 265

8) COMMISSIONER OF INCOME TAX v. V.SIVAKUMAR ((2013) 354 ITR 9

9) COMMISSIONER OF INCOME TAX v. PRIDE REMEDIES PRIVATE LIMITED ((2014) 91 CCH 6 CHENHC.

8. We have carefully considered the decisions relied upon by the learned counsel for the appellant.

9. It is true that certain amount of discretion is vested in the assessing officer as well as the appellate authority and the Tribunal to choose not to impose penalty if the assessee proves that there was reasonable cause for the failure. But, what is reasonable cause is not clearly indicated either in section 269SS or in section 273B. Therefore, in an appeal under section 260A, we can only go by the question whether the exercise of discretion to find out the existence or non-existence of a reasonable cause was properly explained by the authorities or not.

10. In para 8 of its order, the Tribunal has considered this question. Para 8 of the order reads as follows:-

> "The next point raised by both the sides is that as to whether there exists a reasonable cause or not? And

as to whether the onus is on the Department or on the assessee to prove that there exists a reasonable cause. Even though, the assessee was not in need of money, all these loan transactions were made for deposit of money with the assessee and it has accepted the money in cash from the depositor in excess of Rs.20,000/-. For this, the simple reason stated by the assessee is that the depositor was a partner earlier and she wanted to deposit the money with the assessee-firm for safe custody as the firm consists of her sons. This is not a reasonable cause for violation of the provisions of sec.269SS of the Act. If there is reasonable cause as enumerated in sec.273B of the Act, the assessee has to prove that there was reasonable cause which was not done by the assessee. The assessee's plea that the assessee was having sufficient funds and there was no need of money and it has accepted the cash from the person who was a partner earlier in the firm and that is upto 31.5.1985 and now, the mother of the partners, does not constitute a reasonable cause. Further, the fact that the transaction is genuine, is also not a reasonable cause."

11. We do not find any perversity in the approach of the Tribunal. As a matter of fact, instead of distinguishing the correctness of the discretion exercised by the assessing officer, the Tribunal has independently decided the question as to whether there was a reasonable cause or not. The Tribunal has independently applied its mind and come to the conclusion that there was no reasonable cause. In the circumstances, we do not think that question Nos.1 and 3 are to be answered in favour of the assessee. Accordingly, question Nos.1 and 3 are also answered against the assessee. The Tax Case Appeal is dismissed. No costs.

(V.R.S.,J.) (T.M.,J.)
18.8.2015.

Index: Yes/No.
Internet: Yes/No.
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To

1. Income Tax Appellate Tribunal,
"A" Bench, Chennai.

2. The Deputy Commissioner of Income Tax,
Special Range III, Chennai.

V.RAMASUBRAMANIAN, J.
AND
T.MATHIVANAN, J.

Ssk.

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