IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 363 of 2016

Date of decision: 02.12.2016

Principal Commissioner of Income Tax, Bathinda ... Petitioner

versus

Smt. Gursharan Kaur .... Respondent

CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. C.S. Singh, Advocate for the appellant.

S. J.VAZIFDAR, CJ. (ORAL)

This is an appeal against the order of the Tribunal confirming the order of the CIT (Appeals) deleting the penalty imposed by the Assessing Officer under Section 271D for violation of the provisions of Section 269SS of the Income Tax Act, 1961. The matter pertains to the assessment year 2007-08. According to the appellant, the following substantial questions of law arise for consideration:

> "(i) Whether, on the facts and circumstances of the case and in law, the ITAT has erred in deleting the penalty imposed under Section 271D of the Act, by observing that the amounts kept by agriculturist with commission agents were outside the purview of provisions of Section 269SS of the Act, failing to appreciate that the respondent had accepted the loans/deposits in cash and the amounts could not be linked to sale proceeds of agricultural produce?
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> (ii) Whether, on the facts and circumstances of the case and in law, the ITAT has erred in deleting the penalty by relying upon the CBDT circular No. 556 dated 23.12.1990 wherein it has bene provided that amounts received as sale proceeds on sale made on account of a client by commission agent would not be a deposit whereas in the instant case loan/deposits were received by the respondent in cash as could be seen from the transactions

extracted in the assessment order and hence the circular was not applicable ?

(iii) Whether, on the facts and circumstances of the case and in law, the ITAT has erred in not taking into consideration the judgment of the Hon'ble Punjab & Haryana High Court in the case of Charan Dass Ashok Kumar Vs. CIT, 365 ITR 367 wherein it was held by the Hon'ble Court, under similar circumstances that where respondent failed to establish that there was reasonable cause in accepting any loan/deposit in case, the action of the AO imposing penalty under Section 271D was justified and the ratio of judgment of the Hon'ble Punjab and Haryana High court in the case of Auto Piston Mfg. Co. (P) Ltd. Vs. CIT, 355 ITR 414?

The appeal does not raise a substantial question of law. The CIT (Appeals) dealt with the cash balances in the assessee's account and came to the conclusion that the cash taken by him was from agriculturists and had been utilized for the purpose of the assessee's business. It is further found that all the persons who had kept their amounts were agriculturists; that such persons had the means to deposit the amounts; that the deposits were treated as genuine and that the assessment of the amounts were accepted and explained. The CIT (Appeals) and the Tribunal also accepted the reasons for the appellant's accepting the same. They found that there were no *malafides* in doing so. Thus, even without going into the issue on merits, we see no reason to interfere with the exercise of discretion not to levy penalty. The exercise of discretion cannot be said to be perverse or arbitrary.

Therefore, the appeal is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

02.12.2016 **(DEEPAK SIBAL)**
kv **JUDGE**

Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No