

Gurbax Singh
2017.07.26 16:24

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 248 of 2017(O&M)

Date of decision: 17.07.2017

Principal Commissioner of Income-Tax, Bathinda.

.....Appellant

Vs.

**M/s Tehal Singh Khara & Sons, Vill Changli Jadid P.O.
Sherkahanwala, District Ferozepur.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Denesh Goyal, Senior Standing Counsel for the appellant.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 25.7.2016, Annexure A.5, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in ITA No. 180/Asr/2016, for the assessment year 2007-08 claiming following substantial questions of law:-

- (i) "Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was in error in deleting the penalty imposed under Section 271D by adopting reasoning that would negate the provisions of the statute and render Section 269SS of the I.T. Act a nullity?
- (ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was in error in applying the

provisions of Section 273B in a manner that would override the provisions of Section 269SS of the Act and violate the doctrine of harmonious construction?

- (iii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was in error in holding that exclusion from the rigors of Section 269SS of the Act could be provided, if at all, in case of only bonafide transactions and circumstances that would have to be established in each case and no such circumstances were established in the instant case. ?
- (iv) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was in error is not taking into consideration the judgment of Hon'ble Punjab & Haryana High Court in the case of M/s Charan Dass Ashok Kumar Vs. CIT, 365 ITR 367 wherein it was held by this Hon'ble Court, under similar circumstances that where respondent failed to establish that there was reasonable cause in accepting any loan/deposit in cash, the action of the AO imposing penalty under Section 271D was justified. No such reasonable cause leading the acceptance of loan/deposits in cash by the respondent has been established in the instant case. Similar view was held by the Hon'ble Punjab & Haryana High Court in the case of Auto Pistion Mfg. CO. (P) Ltd, Vs. CIT, 355 ITR 414?

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent assessee is a Commission Agent. During the financial year 2006-07 pertaining to assessment year 2007-08, the assessee accepted deposits in cash much in excess of prescribed limit from four different persons aggregating to ₹ 28,28,235/-. Penalty under Section 271D of the Act of ₹ 28,28,236/- was imposed by Joint Commissioner of Income Tax, Range-3, Ferozepur.

Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 15.01.2010, Annexure A.2, the CIT(A) dismissed the appeal. The assessee filed further appeal before the Tribunal. Vide order dated 21.12.2010, Annexure A.3, the Tribunal remitted the case back to the CIT(A) with the direction to decide the matter afresh after giving adequate opportunity of being heard to the assessee. Vide order dated 28.01.2016, the CIT(A) allowed the appeal of the assessee directing the Assessing Officer to delete the penalty amounting to ₹ 28,28,236/- holding the creditors to be genuine agriculturists and their cash transactions to be genuine and that there was confirmation of the money having been deposited and returned. Aggrieved by the order, the department filed appeal before the Tribunal. Vide order dated 25.07.2016, Annexure A.5, the Tribunal dismissed the appeal of the Department and upheld the order passed by the CIT(A). The Tribunal followed the decision rendered by the Delhi High Court in ***Azadi Bachao Andolan Vs. Union of India*** (2001) 252 ITR 471 and ***Wood Ward Governors of India (P) Ltd.*** (2001) 118 taxman 433,745. According to the appellant-revenue, no reasonable cause leading to acceptance of loan/deposits in cash by the assessee had been established in the present case. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue.

4. It has been recorded by the CIT(A) that in order to verify the bonafides of the impugned transactions in which cash deposits were received and repaid aggregating in excess of ₹ 20,000/-, a remand was sent to the jurisdictional Joint Commissioner who opined that persons who had deposited cash with the assessee and subsequently got it returned in cash were identifiable agriculturists who were produced before

the authorities. They also presented and filed copies of jamabandis to indicate their holding of land on which agricultural operations were conducted. Copies of account of deposits with the assessee were also adduced to show that they indeed deposited money with the assessee firm and subsequently received back the same. From the regularity of the transaction in case of each of the depositors, it was apparent that receipt and repayment were in the nature of inter se transactions. After examining the matter, it was concluded by the CIT(A) that the remand proceedings found the creditors to be genuine agriculturists and their cash transactions also to be genuine, in as much as there was confirmation of the money having been deposited and returned. It was categorically recorded that the impugned transactions could not be said to have been aimed at attempting to evade tax thereby causing loss to the revenue. Thus, the imposition of penalty under Sections 271D and 271E of the Act was not held to be justified. The relevant findings recorded by the CIT(A) in this regard read thus:-

“In the appellant’s case, the business exigencies of making cash payment to farmers for the purposes of both-honouring commitment as also to help them cannot be denied. The remand proceedings found the creditors to be genuine agriculturists and their cash transactions also to be genuine, in as much as there was a confirmation of the money having been deposited and returned. The said impugned transactions also cannot be said to have been aimed at or attempting to evade tax, thereby causing loss to revenue. In such circumstances, it can reasonably be held that the breach of the statutory provisions contained in Section 269SS & 269T of the Act flowed by a bonafide belief, which is ex-facie a venial breach. It may also be appreciated that the Hon’ble Supreme Court, while hearing the constitutionality of the provisions of Section 269SS, observed that the undue hardship emanating from the said provision, perceived to be expropriatory in nature, is very much mitigated

by the inclusion of Section 273B (2002) 255 ITR 258. Following the judicial precedents, including that of the jurisdictional High Court of Punjab and Haryana, it is held that the imposition of penalty under Sections 271D & 271E of the Act, in the circumstances, was not justified. The AO is, therefore, directed to delete both the aforesaid penalties. It is ordered accordingly.”

5. On appeal by the revenue before the Tribunal, the findings recorded by the CIT(A) were upheld. It was recorded by the Tribunal that there was reasonable cause for entering into the above said transactions. The creditors from whom the cash was received and repaid were held to be genuine and confirmation to that act was obtained from the said persons and the transactions were not made for attempting to evade tax. The relevant findings recorded by the Tribunal in this regard read thus:-

“While going through the material placed on record, we find that in the second round of appellate proceedings before learned CIT(A), the learned CIT(A) remanded the issue back to the office of Assessing Officer. The Assessing Officer in his remand report submitted that the persons from whom cash was received and was subsequently repaid were identifiable agriculturists. It was also submitted in the remand report that the said persons had filed a copy of jamabandi to indicate that agricultural operations were being conducted on their land. The learned CIT(A) in view of these facts deleted the penalties by holding as under:

6. The penal provisions of Section 271D and 271E for contravention of the provisions contained in Sections 269SS & 269T respectively are hemmed in by the provisions of Section 273B of the Act which prescribes imposition of penalty in cases where contravention of the statutory provisions have been occasioned because of “reasonable cause”. “Reasonable cause” neither finds any definition, for, as held by the Hon’ble Delhi High Court in the case of *Axadi Bachao Andolan Vs. Union of*

India (2001) 252 ITR 471, attempting to give a specific meaning to the word “reasonable” is trying to count what is not number and measure what is not space. Ordinarily, reasonable cause would mean an honest belief founded upon reasonable grounds of the existence of a state of circumstances which (assuming them to be true), would reasonably lead any ordinary, prudent and cautious person (placed in the position of the person concerned) to come to the conclusion that the same was the right thing to do. The cause has to be considered and only if it is found to be frivolous, without substance or foundation, as held by the Hon’ble Delhi High Court in the case of the Wood Ward Governors of India (Pvt) Ltd. (2001) 118 taxman 433, 745 penalty can be imposed. In the context of penalty provisions, words “reasonable cause” would definitely mean a cause which is beyond the control of the appellant.

7. XXXXXXXXX

We find that the learned CIT(A) has made a finding of fact that creditors from whom cash was received and cash was repaid were genuine and he has also made a finding of fact that a confirmation to that act was obtained from these persons and the transactions were not made for attempting to evade tax, therefore, he held that there was a reasonable cause for entering into such transactions. The learned CIT(A) has passed an exhaustive and elaborate speaking order, and we do not find any infirmity in the order of learned CIT(A), therefore, the appeals filed by revenue are dismissed.”

6. The findings of fact recorded by the CIT(A) as affirmed by the Tribunal have not been shown to be illegal or perverse or based on misreading of evidence on record by the learned counsel for the appellant-revenue so as to warrant interference by this Court.

7. Adverting to the judgments relied upon by the learned counsel for the revenue, it may be noticed that in ***Auto Piston Mfg. CO. Pvt. Ltd Vs. Commissioner of Income Tax***, (2013) 355 ITR 414, the question was whether the Tribunal was justified in confirming the penalty under Section 271D of the Act. In view of the facts and circumstances of that case, the explanation tendered by the assessee was not found to be reasonable and, therefore, the imposition of penalty was held to be valid. Such is not the position in the present case. Herein there was reasonable cause for entering into the transactions in question. Thus, the appellant cannot derive any advantage from the said decision. Similar was the position in ***Charan Dass Ashok Kumar Vs. Commissioner of Income Tax*** (2014) 365 ITR 367. Each case has to be decided on its own facts. However, in the present case, the position being different, the appellant cannot derive any advantage from this decision as well.

8. In view of the above, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 17, 2017
'gs'
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes