IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 171 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
Ajitnath Hi-Tech Builders Pvt. Ltd. .. Respondent

AND
INCOME TAX APPEAL NO. 172 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
Lodha Properties Development Pvt. Ltd. .. Respondent

AND
INCOME TAX APPEAL NO. 202 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
Lodha Crown Buildmart Pvt. Ltd. .. Respondent

AND
INCOME TAX APPEAL NO. 213 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
Lodha Builders Pvt. Ltd. .. Respondent

AND
INCOME TAX APPEAL NO. 218 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
M/s. Adinath Builders Pvt. Ltd. .. Respondent

AND
INCOME TAX APPEAL NO. 219 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
Asthavinayak Real Estate Pvt. Ltd. .. Respondent

Mr. N. C. Mohanty for the appellant
Mr. V. Sridharan, Senior Counsel a/w Mr. Shyam Gopal, Mr. Ziyad Madon, S. Sriram ib/ Veritas Legal for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 6th FEBRUARY, 2018.

P.C.

1. These Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenges a common order dated 27th June, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order is in respect of Assessment Year 2009-10.

2. The Revenue has urged the following identical questions of law in all these appeals for our consideration :-

(i) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in deleting the penalty u/s 271D holding that there was reasonable cause u/s 273B for entering into such transactions through journal entries.

(ii) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the penalty order is barred by limitation under Section 275(1) of the Income Tax Act, 1961(the Act) ?

(iii) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the Assessing Officer's decision to refer the matter of penalty u/s 271D to the Addl. Commissioner of Income Tax constitute "action for imposition of penalty" and, therefore, period of limitation would be counted with reference to the date of assessment order instead of the date of issue of penalty notice by the Addl. CIT ?

(iv) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the journal entries should enjoy equal immunity on par with account payee cheques and bank drafts ?

3. Regarding Question No.(i) :-

(a) The common impugned order of the Tribunal arises from the orders passed by the Addl. Commissioner of Income Tax imposing penalty upon the respondents under Section 271D of the Act for breach of Section 269SS of the Act. This penalty was imposed inasmuch as during the previous year relevant to the subject assessment year, the respondents had accepted loans / deposits by way of passing journal entries in its books of accounts, in breach of Section 269SS of the Act. In terms Section 269SS of the Act prohibits a person from taking / accepting any loan / deposit or specified sum, otherwise by an account payee cheque or by an account payee bank draft or by use of electronic clearing system of a bank if the amount involved is in excess of Rs.20,000/-. This imposition of penalty under Section 271D of the Act, was upheld by a common order dated 31st December, 2013 passed by the Commissioner of Income Tax (Appeals). On further appeal, the impugned order dated 27th June, 2014 of the Tribunal, *inter alia* held that penalty under Section 271D of the Act is not imposable in view of Section 273B of the Act. This for the reason that there was a reasonable cause for the failure to comply with Section 269SS of the Act.

(b) On merits of the issue, the parties before us are agreed that the Tribunal was correct in holding that receipt of any advance / loan by way of journal entries is in breach of Section 269SS of the Act as the decision of this Court in ***Commissioner of Income Tax Vs. Triumph International Finance (I) Ltd. 345 ITR 270*** is binding upon it. However, the Revenue's grievance is with the impugned order dated 27th June, 2014 of the Tribunal further holding no penalty under Section 271D of the Act is imposable in view of Section 273B of the Act in the present facts. This is so as the Tribunal holds that the failure to comply with Section 269SS of the Act was on account of reasonable cause on the part of the respondents. This finding of reasonable cause was on the application of parameters laid down by this Court in

Triumph International Finance (supra) to determine reasonable cause for not complying with the provisions of Section 269SS of the Act.

(c) Mr. Mohanty, the learned Counsel for the Revenue seeks to challenge the impugned order of the Tribunal on the ground that Section 273B of the Act will have no application as the test of reasonable cause is not satisfied :in the present facts for the following reasons :-

(i) the decision of this Court in *Triumph International Finance* (supra) will have no application as that was of the case of only one transaction while in this case, there are numerous transactions reflected through the passing of journal entries;

(ii) the reasons set out for taking advances / deposits by way of journal entry would not satisfy the test of reasonable cause; and

(iii) the non-satisfaction of showing reasonable cause as required under Section 273B of the Act gives rise to a question of law as it is a legal inference to be drawn from primary facts as held by the Apex Court in ***Premier Breweries Ltd. Vs. Commissioner of Income Tax, 372 ITR 180***.

Thus, it is submitted this question requires admission as it gives rise to a substantial question of law;

(d) We find that the impugned order of the Tribunal has on application of the test laid down for establishment of reasonable cause, for breach of Section 269SS of the Act by this Court in *Triumph International Finance* (supra) found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal while relying upon the order of this Court in *Triumph International Finance (supra)* has held that in the present facts, neither the genuineness of receipt of loans / deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. Further, the Tribunal records that as observed by this Court in *Triumph International Finance* (supra) that journal entries constituted a recognized modes of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes out side the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with Section 269SS of the Act.

(e) Mr. Mohanty's submission that the test laid down in *Triumph International Finance (supra)* will have no application in the present facts in view of the large number of entries in this case as compared to only one entry in the case before this Court. The test of reasonable cause can not, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the Assessee for reasonable cause and this finding is not shown to be perverse. Finally, the issue of there being a reasonable cause or not is an issue of fact. No inference of law and / or issue of interpretation is to be made. The decision relied upon by the Revenue in case of *Premier Breweries Ltd.(supra)* concerned itself with the issue of a claim for deduction under Section 37 of the Act on the basis of the Agreements entered into between the parties. The inference of law in that case was whether on the facts, it could be inferred that the claim for deduction is in respect of expenditure incurred wholly and exclusively for the purposes of the business. Thus, it would involve a question of interpretation of the agreements etc. from which an inference is to be drawn. Further, it also involves application of principles of law to the facts for the purposes of deductions and, therefore, it would lead to a question of law. Therefore, the Court held in the facts of that case that a question of law does arise.

(f) In this case, the issue of reasonable cause is an inference of fact from facts and, therefore, a question of fact. The Supreme Court decision in ***Sree Meenakshi Mills Ltd. Vs. Commissioner of Income Tax, 31 ITR 28*** had laid down the tests to determine a question of law and / or fact. In the above context, the Court observed that when the finding is one of fact, the fact that it itself is an inference from other basic facts, will not alter its character as one of fact. Therefore, the issue of there being reasonable cause or not, is a question of fact and unless it is shown to be perverse, we would normally not interfere.

(g) In the above circumstances, the view taken by the Tribunal on the facts before it, is a possible view and does not give rise to any substantial question of law.

(h) In any event, as rightly pointed out by Mr. Sridharan, learned Senior Counsel for the respondents assesses, the order of this Court in *Triumph International Finance* (supra) was rendered on 12th June, 2012. This, was in an appeal filed by the Revenue from the order of the Tribunal dated 29th January, 2008, which had held that deposits / loans received through journal entries do not fall with the mischief of Section 269SS of the Act, so as to invite penalty under Section 271D of the Act. This, the Tribunal did by following its earlier orders in the case of V.N. Parekh Ltd. and Ketan Parekh as indicated in the order of this Court in *Triumph International Finance* (supra). Our attention was also invited to numerous reported decisions of the Tribunal in the cases of Sunflower Builders Vs. Dy.CIT, 1997 (61) ITD (Pune) 227, Asst.CIT Vs. Ruchika Chemicals & Investment (P) Ltd. 2004 (88) TTJ (Delhi)85 and Asst.CIT Vs. Lala Murari Lal & Sons, 2004(2) SOT (Luck) 543 wherein it has been held journal entries in the book of accounts indicating deposit / loans will not fall foul of Section 269SS of the Act. Besides, the Delhi High Court in ***Commissioner of Income Tax Vs. Noida Toll Bridge Co. Ltd. 262 ITR 260*** *inter alia* held that payment of Rs.4.85 crores made by the assesses by a journal entry in its books of account by crediting the account of ILFS, would not fall foul of Section 269SS of the Act. This particularly in the absence of any payment being made in cash.

(i) In the present facts, the period during which the journal entries were made by the respondents was in the previous year relevant to the Assessment Year 2009-10 i.e. Financial Year 2008-09. At that time, the decisions of the Tribunal in the cases of *Triumph International* (Supra) and decision of V.H. Parekh (P) Ltd., Ketan V. Parekh, Sunflower Builders (supra), Ruchika Chemicals (supra), Lala Murari Lal (supra) and the decision of the Delhi High Court in Noida Toll Bridge Co. Ltd. (supra) were holding the field. Thus, not in breach of Section 269SS of the Act. In the above view, while agreeing with the submission of Mr. Mohanty, learned Counsel for the appellant that the decision of this Court in *Triumph International Finance* (supra) has only clarified / stated the position as always existing in law, the receiving of deposits / loans through journal entries would certainly be hit by Section 269SS of the Act. Nevertheless, prior to the decision of this Court in *Triumph International Finance* (supra), there was reasonable cause for respondents to receive deposit / loan through journal entries. This non-compliance with Section 269SS of the Act would certainly be a reasonable cause under Section 273B of the Act for non-imposition of penalty under Section 271D of the Act.

(j) In the above circumstances, the view taken by the Tribunal in the impugned order holding that no penalty can be imposed upon the respondents as there was a reasonable cause in terms of Section 271B of the Act for having received loans / deposits through journal entries is at the very least is a possible view in the facts of the case.

(k) Therefore, the question as posed does not give rise to any substantial question of law. Thus, not entertained.

4. **<u>Regarding question nos. (ii), (iii) and (iv) :-</u>**

(a) In view of our answer to question no.(i), question nos. (ii), (iii) and (iv) in the present facts have been rendered academic. Thus, we are not dealing with them.

(b) In the above view, question (ii), (iii) and (iv) do not give rise to any substantial question of law in the present facts. Thus, not entertained.

5. Accordingly, all six appeals are dismissed. No order as to costs.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**