

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.3.2018
CORAM
THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

T.C. (A) Nos.838 and 839 of 2017

M.Sougoumarin

.. Appellant/Respondent

Vs

The Assistant Commissioner of Income Tax
Circle-I, D.P.Thottam, Muthialpet
Puducherry - 605 003. .. Respondent/Appellant

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 31.3.2016 made in I.T.A.Nos.262 and 263/Mds/2015 against order dt.14/11/14 in ITA.No.1502 and 1503/13-14 by the Commissioner of income tax (Appeals-VI, Chennai and against order dt.30.04.2013 in C.R.No.32 & 34/JCIT/PD4/27/E/2012-13 by the Joint Commissioner of Income Tax, Puducherry.

For Appellant : Mr.A.S.Sriraman
For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

These appeals are against an order dated 31.3.2016 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, allowing the appeals, being I.T.A.Nos.262 and 263/Mds/2015, in relation to the assessment years 2008-2009 and 2012-2013 filed by the respondent Revenue and restoring the penalty imposed by the Assessing Officer under Sections 271E and 271D of the Income Tax Act, 1961 (hereinafter referred to as "the IT Act").

2. The facts giving rise to these appeals are very briefly enumerated hereinafter.

3. It appears that a survey under Section 133A of the IT Act was conducted in the case of Mr.A.Kannan, Proprietor, Vadamalayan Finance, No.C-4, II Floor,

Thiyagaraja Apartment, First Main Road, Thanthai Periyar Nagar, Pondicherry - 605 005, on 8.9.2011 and books of accounts and supporting documents were impounded under Section 133A(3) of the IT Act.

4. The survey revealed that the said A.Kannan carried on business of lending, even though he had no licence to do so. From the records maintained by the said A.Kannan, it was noticed that the assessee had obtained and also repaid loans exceeding Rs.20,00,000/- in cash. It further appears that the Assessing Officer found that the loans and repayment had not been accounted for in the regular books of accounts of the assessee or the firm in which the assessee was partner and even if so recorded, no business exigency and urgency had been established for following a prolonged and persistent system of accepting and repaying loans only in cash.

5. Sections 269SS, 269T, 271D and 271E of the IT Act provide as follows:

"Section 269SS. Mode of taking or accepting certain loans, deposits and specified sum.

No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,-

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,-

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.—For the purposes of this section,—

- (i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;
- (ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;
- (iii) "loan or deposit" means loan or deposit of money;
- (iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

Section 269T. Mode of repayment of certain loans or deposits.

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the

name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account if—

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from—

(i) Government;

(ii) any banking company, post office savings bank or co-operative bank;

(iii) any corporation established by a Central, State or Provincial Act;

(iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing,

notify in this behalf in the Official Gazette.

Explanation.—For the purposes of this section,—

(i) "banking company" shall have the meaning assigned to it in clause (i) of the Explanation to section 269SS;

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;

(iv) "specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

Section 271D. Penalty for failure to comply with the provisions of section 269SS.

(1) If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 271E. Penalty for failure to comply with the provisions of section 269T.

(1) If a person repays any loan or deposit or specified advance referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified advance so repaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

6. As observed above, in course of inspection of the books of A.Kannan, it was found that the appellant assessee had repaid loan of Rs.20,00,000/- in cash to A.Kannan on various dates.

7. Notice under 271E read with Section 269T of the IT Act was served on the appellant assessee on 2.12.2012. The assessee

duly filed his reply before the Assessing Officer, but the explanation offered was not accepted.

8. The Assessing Officer found that the fact that the assessee had taken and repaid loans in cash was admitted. The Assessing Officer observed that the loans and repayments had not been accounted for in the regular books of accounts of the assessee or the firm in which the assessee was a partner and even if so recorded, no business exigency or urgency had been established to follow a prolonged and persistent system of accepting and repaying loans only in cash.

9. The Assessing Officer found that the assessee could not claim to have a reasonable cause contemplated under Section 273B of the IT Act to the satisfaction of the Assessing Authority and levied penalty to the extent of a sum equal to the loan amount repaid under Section 271E of the IT Act, i.e., Rs.20,00,000/- in relation to the assessment year 2008-2009, and also levied penalty under Section 271D of the IT Act to the extent of Rs.20,00,000/- in relation to the assessment year 2012-2013.

10. Being aggrieved by the orders imposing penalty, the assessee filed appeals, being I.T.A.No.1502/13-14 and I.T.A.No.1503/13-14, before the Commissioner of Income Tax (Appeals)-VI, Chennai, who allowed the appeals and deleted the penalty levied by the Assessing Officer by two several orders, both dated 14.11.2014.

11. The Appellate Tribunal, by the order impugned before us, as observed above, allowed the appeals and restored the penalty under Sections 271E and 271D of the IT Act, observing as under:

"9. In this case, there is no justifiable reasonable cause for repayment of loans in cash and it is a clear violation of law not for in a single accounting year, but continuing the violation first by the father and next his son (assessee) since many years. Therefore, it cannot be said that it is ignorance but it is intentional and total negligence on the part of the assessee. The assessee has not produced books of accounts to vouch for entering such details. These cash transactions have not been recorded in the regular books of accounts of the assessee or the firm in which he is the partner. Now, it become essential to put an end to the prolonged and persistent violation of law by taking and repaying loans in cash exceeding Rs.20,000/-. Under the above facts and circumstances and respectfully following the above decision of the Coordinate Bench of the

Tribunal as well as the decision of the Hon'ble Jurisdictional High Court in the case of P.Muthukaruppan v. JCIT ([2015] 375 ITR 243), we reverse the findings of the Id. CIT (A) in deleting the penalty levied under section 271E for the assessment year 2008-09 as well as penalty under section 271D for the assessment year 2012-13 and restore that of the Assessing Officer by sustaining the penalty levied under section 271E and 271D of the Act for both the above assessment years. Thus, the ground raised by the Revenue stands allowed."

12. The learned counsel appearing on behalf of the appellant assessee, Mr.A.S.Sriraman, has strenuously argued that the learned Tribunal breached judicial discipline in ignoring the orders of other Benches of coordinate strength of the learned Tribunal.

13. However, in our considered opinion, every assessment year is different and a factual finding pertaining to any one assessment does not operate as a binding precedent in respect of subsequent assessment years. The orders of other Benches of coordinate strength of the learned Tribunal pertaining to other assessment years and/or to other assessees would not operate as a precedent.

14. In this context, it would perhaps not be out of context to note that statutory provisions which prohibit acceptance of repayment of loans in cash are binding on all Income Tax payees and breach thereof attracts the penal provisions of the IT Act, and renders an assessee taking or repaying loans exceeding Rs.20,000/- liable to penalty.

15. Perhaps interference on the ground of breach of consistency or on the ground of perversity may have been warranted if loan in cash had been taken once or twice in exceptional exigencies. However, the fact that a lender, not even licensed, was illegally giving loans only in cash and accepting repayments in cash cannot be ground for condonation of regular transactions with such an unauthorised lender.

16. Mr.A.S.Sriraman is correct in his submission that provisions should be initiated against the lender, A.Kannan. In these appeals, we are not concerned with A.Kannan. It is for the department to proceed against A.Kannan. However, the mere fact that proceedings may not have yet been initiated against the said A.Kannan, does not entitle the appellant assessee to relief. It is well settled that there cannot be any equality to a wrong and Article 14 of the Constitution of India does not permit extension of the benefit of a wrong order and/or decision to others similarly circumstanced.

17. We are of the view that the Appellate Tribunal was correct in law in restoring the order of the Assessing Officer for imposition of penalty under Sections 271D and 271E of the IT Act.

18. It is true that the appeals were entertained. However, on detailed examination of the contentions of the respective counsel, we are of view that the finding arrived at by the Appellate Tribunal is a finding on facts. The Tribunal, on consideration of the facts narrated above, was of the view that there was no such reason for regular loan transactions of borrowing and repayment in cash of amounts exceeding Rs.20,000/- so as to escape penal liability under Sections 271E and 271D of the IT Act. There is no question of law, not to speak of any substantial question of law, involved in these appeals.

19. Deliberate flouting of the law can never be a justification for exemption from penalty, except in the rarest of rare cases of extreme exigency.

20. The appeals are, thus, dismissed. No costs. Consequently, C.M.P.No.21193 of 2017 is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Registrar
Income Tax Appellate Tribunal
'B' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)-VI
Chennai - 600 034.
3. The Joint Commissioner of Income Tax
Puducherry Range, Puducherry.
4. The Assistant Commissioner of Income Tax
Circle-I, D.P.Thottam, Muthialpet
Puducherry - 605 003.

+1cc to Mr.S.Sridhar, Advocate SR.No.18971

+1cc to Mr.T.R.Senthilkumar, Advocate SR.No.19107

SJ(Co)

sm:15.5.2018

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