

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Nos.1431 & 1432 of 2007

M/s.NRK Thangamani

Appellant/Appellant

Vs.

The Joint Commissioner of Income Tax
Range III, Coimbatore.

Respondent/Respondent

Tax Case filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 16.9.2007 made in ITA Nos.1551/Mds/2005 and 1552/Mds/2005.

Against the Order dated 16/3/2005 made in 225/2003-04 on the file of the Commissioner of Income Tax, Coimbatore (Appeals) I for the Assessment year 2000-01 and against the Order dated 22/09/2003 made in Cr.No. 21A/2003-04 on the file of the Joint Commissioner of Income Tax, Range III, Coimbatore and against the Order dated 06/03/2003 made in N 329/WDIII(1)/CBE on the file of the Income Tax Officer, Ward III (i), Coimbatore for the Assessment Year 2000-01.

For Appellant : Ms.Sree Lakshmi Valli for
M/s.Mallika Srinivasan

For Respondent : Mr.T.R.Senthilkumar
Senior Standing Counsel assisted by
Ms.K.G.Usha Rani, Jr.Standing Counsel

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The Assessee has filed these two Appeals under Section 260-A of the Income Tax Act, aggrieved by the order of the Income Tax Appellate Tribunal dated 16.9.2007 for the Assessment Year 2000-2001 by which the learned Tribunal dismissed the Assessee's Appeal and upheld the imposition of penalty under Section 271D

and 271E of the Income Tax Act 1961 for the alleged violation of Sections 269SS and 269T of the Act.

2. The Findings of the learned Tribunal in this regard are quoted below for ready reference:-

"10. In the present case the main crux of the argument of the assessee is that the transactions are genuine and the money was borrowed due to business expediency. The genuineness of the transaction can not be held as a reasonable cause which is clear from the memorandum explaining the provisions in Finance Bill 1984. The words 'reasonable cause' have not been defined under the Act but the same could receive the interpretation which is given to the expression 'sufficient cause'. While dealing with the penalty provisions the words 'reasonable cause' would mean a cause which is beyond the control of the assessee. The 'reasonable cause' means a cause which prevents a reasonable man or man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fide explanation. It is pertinent to note that as to whether there exists a reasonable cause or not. In the present case, the assessee has never explained any reasonable cause for violation of the provisions of section 269SS of the Act which invokes the provisions of section 271D of the Act for levy of penalty. The only plea of the assessee that transactions are genuine is made callous in a place where there is banking facility. This plea of the assessee is very vague and not supported by any iota of evidence. One more plea of the assessee is that the transactions were entered on account of business expediency. In business every business man needs money, much less needs urgently. Money is required to meet different commitments, which may be periodical or day to day commitments. A prudent business man should plan appropriately the funds management to meet the requirements of various types. The legislature had given discretion to the assessing authority u/s.273B of the Income Tax Act not to levy penalty as provided under section 271D of the Income Tax Act. Under Section 273B of the Act, if there is a reasonable and sufficient cause, the authorities shall not levy penalty depending upon the circumstances of each case. In the present case, the assessee is in the business of IMFL and borrowed money for the purpose of bidding the

allotment of IMFL shop. The assessee is not new to this business and it is not a single transaction either. Every year the assessee is bidding for allotment of IMFL shop and the Government is giving prior notice regarding the date of bidding. Auction is not conducted by the Government all of a sudden without giving time for the bidders to arrange for funds for paying the allotment money, if allotted. The claim of the assessee is that the transactions are genuine and hence does not fall within the ambit of Section 269SS. The claim of the assessee is not tenable. Section 269SS was brought into the Statute to counter the tax evasion. The assessee is unable to provide any material or evidence to show that there exists reasonable cause for accepting the loan in cash. In earlier year also, the assessee borrowed money in cash. The department took a very lenient view and dropped the penalty proceedings. The assessee shall not take undue advantage of the liberal view of the Department. When in the earlier year itself, the Department had initiated and later dropped the penalty proceedings, the assessee ought to have been vigilant and should not have committed the same mistake in the subsequent years. Repetition of the same mistake by the assessee goes to show the callous attitude of the assessee and is definitely a deliberate violation of Section 269SS of the Act.

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19. We have heard both the parties and perused the materials on record. This issue is on account of violation of provisions of Sec.269T and the consequent levy of penalty under section 271E of the Act. The provisions of sections 269T is similar to that of 269SS. Section 269T reads as under:

.....

All the discussions and arguments putforth by us in appeal No.ITA 1551/Mds/05 in the foregoing paragraphs holds good for this issue also in this case also, the assessee has failed to provide reasonable cause for the need to repay the loans in cash and hence there is a deliberate violation of section 269T of the Act. Accordingly the levy of penalty under Section 271E is justified. We uphold the order of Learned Commissioner of Income-tax (Appeals). Accordingly the appeal of the assessee is dismissed."

3. Learned counsel for the Assessee Ms.Sree Lakshmi Valli submitted that similar penalty proceedings were dropped by the Assessing Authority for the preceding Assessment Year viz., Assessment Year 1999-2000, vide communication dated 9.11.2005, wherein after considering the facts of the case and ascertaining the reasonableness which necessitated the acceptance of deposits by cash by the Assessee, the said Additional Commissioner of Income Tax found that it was not a fit case for levy of penalty and therefore, penalty proceedings under Section 271D were dropped and therefore, the learned Tribunal ought not to have upheld the same penalty for the very next Assessment Year viz., 2000-2001. She further submitted that the Assessee was engaged in the business of Liquor where at the time of bids being given for obtaining Liquor Licence at the nick of time, the Assessee had to deposit the bid amount by way of demand draft and since the award of contract in such cases in favour of the Assessee was uncertain, the Assessee could not keep such demand drafts ready and therefore, obtained cash loans from his friends and immediately utilised the same for drawing of demand draft and procuring Liquor Contract in question. She submitted that in the very next Assessment Year, the Assessee opened a separate Bank Account for the said purpose on 31.8.2007 with a national bank and on the next year onwards, the Assessee had started making such Demand Drafts only through bank account. But, for the Assessment Year 2000-2001 though the learned Tribunal noted the said fact of dropping of penalty for the preceding year viz. Assessment Year 1999-2000, but, still imposed penalty for the Assessment Year 2000-2001 by observing that the Assessee cannot be permitted to take undue advantage of the liberal view of the Department taken for the Assessment Year 1999-2000. She submitted that deposit of cash was accepted by the Assessee as well as repayments were made by the Assessee in cash due to the exigencies of business looking into the peculiar nature of the business of the Assessee and therefore, in view of the said facts and circumstances prevailing in the year 2000-2001 also, the learned Tribunal ought to have taken a similar view as was taken by the original Assessing Authority himself in the preceding year viz., Assessment Year 1999-2000.

4. On the other hand, the learned Senior Standing Counsel Mr.T.R.Senthilkumar appearing for the Revenue supported the impugned order and submitted that the nature of business was very well known to the Assessee and the very fact of dropping the penalty proceedings for the preceding year cannot a ground to set aside the similar penalty proceedings in the next year also and therefore, the order of the learned Tribunal was justified. He relied upon the decision of this court in the case of Vasan Healthcare (P) Ltd. v. Additional Commissioner of Income-tax, Chennai Range-2, Chennai ((2019) 103 Taxman.com 26 (Madras)). The order passed by the Assessing Authority in the

present case is a speaking order for imposition of penalty.

5. The present Appeal was admitted by a coordinate Bench of this court on the following substantial questions of law:-

"T.C.No.1431/2007:

Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in confirming the levy of penalty under Section 271D of the Income Tax Act for the assessment year 2000-2001?

T.C.No.1432/2008:

Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in confirming the levy of penalty under Section 271E of the Income Tax Act for the assessment year 2000-2001?"

6. Having heard the learned counsel for the parties, we are satisfied that the learned Tribunal could have taken a liberal view of the matter and since the imposition of penalty depends upon the facts and circumstances of each case and if the Assessee can putforth a reasonable cause for accepting the deposits in cash then, such circumstances can be considered by the Assessing Authority to waive or reduce the penalty in question. In view of the fact that in similar circumstances and for the same Assessee, the Assessing Authority himself entirely waived off the penalty for the preceding Assessment Year 1999-2000 vide communication dated 9.11.2005, the learned Tribunal, in our opinion, fell in error in upholding the imposition of penalty by just observing that the Assessee ought not have repeated such a mistake and ought to have done the transaction only through Bank which method, in fact, as the learned counsel for the Assessee submitted, was adopted on 31.8.2001 on which date, the Bank Account was opened by the Assessee and therefore, it is only for this Assessment Year 2000-2001 which stands out and in respect of which the present Appeals are concerned. The law laid down in the decision of Vasan Healthcare (P) Ltd. v. Additional Commissioner of Income-tax, Chennai Range-2, Chennai ((2019) 103 Taxman.com 26 (Madras) is not applicable to the present case as the facts of the judgment in that case are distinguishable as there was no such fact of dropping penalty proceedings in the preceding year in that case.

7. We are, therefore, inclined to take a lenient view in favour of the Assessee in the facts and circumstances of the case and are inclined to allow the present Appeals in favour of the Assessee on the ground that the for the preceding Assessment Year viz., 1999-2000, on the same set of facts and circumstances, the Assessing Authority himself dropped the

penalty proceedings in question. Accordingly, we allow the present Appeals of the Assessee and answer the questions framed above in favour of the Assessee and against the Revenue. No costs.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

ssk.

To

- 1.The Joint Commissioner of Income Tax
Range III, Coimbatore.
- 2.The Commissioner of Income Tax,
Coimbatore (Appeals) I
- 3.The Income Tax Officer,
Ward III (i),
Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 77080
+2cc to Mr.Mallikasrinivasan, Advocate, S.R.No. 77027

T.C.Nos.1431 & 1432 of 2007

SR(CO)
GN(18/10/2019)

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