

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.178 of 2018

AFR

Principal Commissioner of Income Tax-1, Bhubaneswar *Appellant*

Mr. T.K. Satapathy, Senior Standing Counsel
-versus-

M/s. Akash Infra-com-Projects Pvt. Ltd. *Respondent*

Mr. Chitrasen Parida, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

**ORDER
30.06.2022**

Order No.

Dr. S.Muralidhar, CJ.

03. 1. The Revenue is in appeal against an order dated 24th August 2018 of the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.159/CTK/2018 for the assessment year (AY) 2013-14. By the said impugned order, the ITAT rejected the Revenue's appeal filed against an order dated 1st February 2018 of the Commissioner of Income Tax (Appeals) [CIT(A)] deleting the penalty of Rs.1.7crores levied on the Respondent-Assessee by the Additional CIT under Section 271 D read with Section 269 SS of the Income Tax Act, 1961 (Act).
2. The Assessing Officer reported the matter to the Additional CIT who the order dated 29th September 2016 levied the above penalty under Section 271 D of the Act on the ground that the Assessee had accepted the loans of 1.5crores in cash from M/s Laxmi Nrushingha

Construction and Rs.20lakhs in cash from M/s S.S. Parida during the AY in question in violation of the provision of Section 269 SS of the Act.

3. The reason given by the Assessee in response to the show cause notice issued by the Additional CIT for imposition of penalty was that both the entities from whom the cash loan was taken were partnership firms in which the Directors of the Assessee had controlling stake and other partners of the firms were family members and relatives of the Directors of the Assessee-Company. It was submitted by the Assessee that the cash was needed since urgent payments had to be made to the labourers and items required at the construction site had to be purchased. The funds were transferred outside the banking channel since the project site was located at a remote place where banking facility for encashment of the multicity cheques and/or transfer of funds was not available. The sister concerns were assessed to Income Tax and all these transactions had been duly accounted for in the accounts.

4. The Additional CIT, however, rejected the explanation observing that the Assessee could have first accepted the money through its bank account from the sister concerns and then made the cash disbursements for labour and other expenses.

5. The CIT (A) in the impugned order noted that the impugned loan transactions were genuine transactions and in the assessment order, the AO had accepted the same as such. The CIT (A) pointed out that the following facts were evident:

“(i) The so-called loans in cash were obtained from two sister concerns who had enough cash in hand to do so.

(ii) Sri S.S. Parida as the managing director of the assessee company and the main partner of the two sister concerns was the person who was handling cash for all the 3 entities.

(iii) The amounts were taken in cash from the two sister concerns for making labour payments at far off places and there was an urgency to do so.

(iv) There was business expediency which compelled the assessee to accept the amount in cash.

(v) Sri S.S. Parida was not aware of the provisions of section 269SS.”

6. Accordingly, the CIT (A) allowed the Assessee’s appeal and deleted the penalty imposed.

7. The ITAT has in the impugned order concurred with the CIT (A) after referring to the decisions of the Jharkhand High Court in *Engineers v. CIT 294 ITR 599*; and of the Punjab and Haryana High Court in *CIT v. Saini Medical Store [2005] 277 ITR 420* and *CIT v. Sunil Kumar Goel, 315 ITR 163*. Since the genuineness of the loan transactions were not in doubt and the explanation offered by the Assessee was reasonable, the ITAT declined to interfere with the order of the CIT(A).

8. Mr. T.K. Satapathy, learned Senior Standing Counsel for the Revenue, refers to the decision of the Madras High Court in *P. Baskar v. CIT [2012] 340 ITR 560* to urge that the CIT(A) was in error in deleting the penalty.

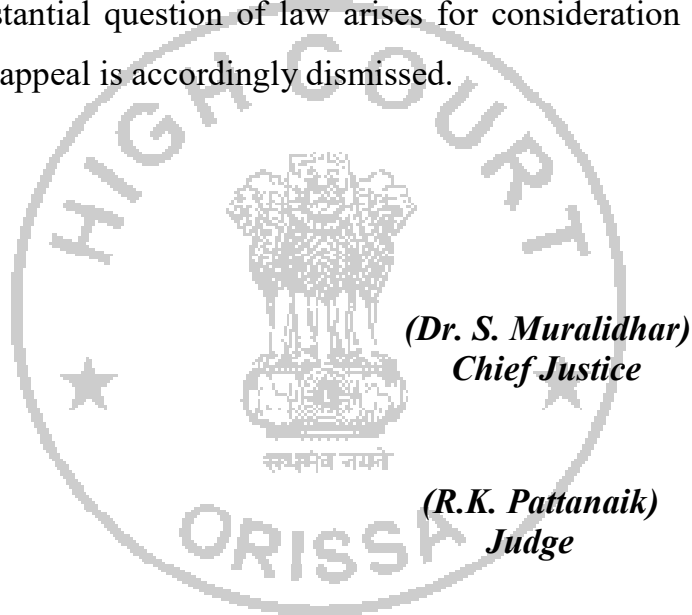
9. On the other hand, Mr. Parida, learned counsel for the Assessee, relies on other decisions of the Madras High Court in *Commissioner of Income Tax v. Deccan Designs (India)(P) Ltd.* [2013] 30 taxmann.com 78 (Mad) and *Director of Income Tax (Exemptions), Chennai v. Young Men Christian Association* [2014] 49 taxmann.com 72 (Mad). He further relied on the decision of the Rajasthan High Court in *Commissioner of Income Tax v. Maheswari Nirman Udyog* [2008] 170 Taxman 502 (Raj); of the Gujarat High Court in *Commissioner of Income Tax v. Panchsheel Owners Associations* [2017] 88 taxmann.com 504 (Guj) and of the Allahabad High Court in *Commissioner of Income Tax-II, Agra v. Smt. Dimpal Yadav* [2015] 61 taxmann.com 219 (All).

10. The above submissions have been considered. The Court finds that in *P. Baskar v. CIT (supra)* the Madras High Court was not satisfied with the explanation offered by the Assessee for not complying with the provisions of Section 269 SS of the Act. It was specifically observed that “the Assessee had not shown any reasonable cause for taking cash loan”. However, in the present case, as noted by the CIT(A), the Assessee did offer a reasonable explanation for taking cash loan and the circumstances in which it was required. In *Commissioner of Income Tax v. Deccan Designs (India)(P) Ltd. (supra)*, where an Assessee accepted cash loans from a sister concern mainly for the purpose of disbursement of salaries to its employees, it was held that the penalty under Section 271D was uncalled for. In *Commissioner of Income Tax v. Maheswari Nirman Udyog (supra)*, it was found that loans had

been taken by the Assessee from a sister concern in cash to make payments to the labourers at site. This was held to be a reasonable explanation which was accepted by the CIT (A) and the ITAT and therefore, did not warrant any interference in appeal.

11. In the circumstances of the present case, the Court is satisfied that no error has been committed either by the CIT (A) or the ITAT in deleting the penalty imposed on the Assessee.

12. No substantial question of law arises for consideration in this appeal. The appeal is accordingly dismissed.



S.K. Guin