

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

ITA-100-2022

Date of decision:- 31.01.2023

Pr. Commissioner of Income Tax (Central), GurugramAppellant

vs.

Aman Sharma ...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Pridhi Jaswinder Sandhu, Jr. Standing counsel
for the appellant

Ritu Bahri, J.

The present appeal has been filed under Section 260-A of the Income Tax Act, 1961 (for short 'Act 1961') seeking setting aside of order dated 28.08.2019 passed by Income Tax Appellate Tribunal, Delhi Bench 'D' passed in ITA5652/Del/2019 whereby appeal filed by the respondent- assessee against order dated 20.05.2019, has been allowed.

The case in brief is that on 17.02.2016, a search under Section 132 of Act 1961 was carried out at the premises of Spaze Towers Pvt. Ltd, where books of account are maintained. The respondent was one of the directors of Spaze Towers Pvt. Ltd, and subsequently, a notice under Section 153-A of the Act was issued to him to on 28.11.2016 asking him to file his return of income. In response to the said notice, the respondent filed his return of income for the assessment year 2015-2016 declaring an income of Rs.94,11,350/-. The assessment of the case of the respondent, under Section 153 (1) (B) was completed on 26.12.2017 (A-1) and the Assessing Officer made the following additions in the returned income:-

“1. Addition of Rs.3,00,000/- on account of cash

receipts from M/s Spaze Towers Pvt. Ltd to meet personal household expenses.

2. Addition of Rs.45,91,675/- on account of unrecorded investment in gold and diamonds.

3. Addition of Rs.75,00,000/- on account of unrecorded expenses on a marriage function of the daughter of the respondent during the year.

Feeling aggrieved, the respondent preferred an appeal before the CIT (A), who vide order dated 20.08.2018 (A-2) confirmed addition of Rs.5,91,675/- out of total addition of Rs.45,91,675/- and deleted all other additions amounting to Rs.1,18,00,000/-. In this order, it has further been held that for the same assessment year, Spaze Towers Pvt. Ltd had approached the learned Settlement Commission on 30.11.2016 and made disclosure of income and also disclosed that on various occasions, the Company had advanced certain amounts to the respondent, which were on returnable basis.

Consequent to the directions contained in the dated 20.08.2018, penalty proceedings under Section 271D of the Act 1961, for contravention of the provisions of Section 269SS of the Act 1961, were initiated by JCIT, Central Range, Gurugram and a show cause notice was issued to the respondent. Vide order dated 14.01.2019 (A-3), a penalty of Rs.1,23,91,675/- under Section 271D of Act 1961 was imposed upon the respondent.

Feeling aggrieved against the aforementioned order, the respondent preferred an appeal before CIT (A), who vide order dated 20.05.2019 confirmed the impugned penalty and dismissed the appeal of the

respondent.

The respondent then filed an appeal before ITAT and his appeal was allowed on 28.08.2019 (A-5) and it was observed that the Company Spaze Towers Pvt. Ltd was inflating its purchase and cash so generated was spent on the personal needs of the directors/promoters in the form of ceremonial functions, farm house construction etc and in the process nowhere actual cash changed hands, but was spent on personal expenses of promoters/directors. It has further been observed that merely because the petitioners/directors agreed to repay the liability, the same cannot be construed as taking loans from the company and since it had incurred personal expenses of the promoters/directors, the same cannot be construed as loans.

Now, the revenue-department has approached this Court seeking setting aside of order dated 28.08.2019.

Similar issue has come up for consideration before Hon'ble Delhi High Court in a case of ***Commissioner of Income Tax vs. Standard Brands Ltd, 2006 SCC Online Del 1696***, whereby the revenue department was seeking setting aside of order dated 26.07.2004, which was passed in respect of block period April 1, 1986 to March 31, 1997. As per assessing Officer, the assessee had received an amount of Rs. 3 lakhs in cash from M/s D.S. Imports. The amount represented undisclosed income in the hands of the assessee but as per assessee, it was a deposit made by M/s D.S. Imports. Hon'ble Delhi High Court dismissed the appeal of the revenue and held that the revenue could not, on the one hand, contend that amount of Rs.3 lakhs is undisclosed income in the hands of the assessee and at the same time seek to initiate proceedings against the assessee for violation of the provisions of

Section 269SS of the Act which deals with cash deposits or loans in excess of Rs.20,000/-. The Revenue having taken the stand that the income was undisclosed income in the hands of the assessee, it could not resort to proceedings under Section 269SS read with Section 271D of the Act, as held by the Tribunal.

Reference at this stage can further be made to judgment of Hon'ble Delhi High Court in a case of ***Commissioner of Income Tax vs. R.P. Singh and Co. Pvt. Ltd, 2012 340 ITR 217*** wherein the appeal of the revenue was dismissed and the operative para of the judgment reads as under:-

“Mr. Kochhar, learned counsel for the assessee, submitted that the said question does not arise in the case at hand inasmuch as both the Commissioner of Income Tax (Appeals) and the Tribunal have recorded a finding that once the Assessing Officer has treated it as undisclosed income, it could not have proceeded on the foundation that it is a deposit. In our considered opinion, this submission canvassed by Mr. Kochhar has substantial force and the question raised by the Revenue really does not arise in this case. Needless to say that the said question may arise where the facts would be different but the same has no relevance to the case at hand. In view of the aforesaid analysis, the appeal being devoid of merit stands dismissed without any order as to costs”.

In the present case as well, once the Assessing Officer has treated the personal expenses incurred by M/s Spaze Towers Pvt. Ltd as income of the assessee, then the same amount cannot be treated as loan in

violation of the provisions of Section 269SS of the Act 1961. The same income cannot be taxed in two hands in the same assessment year and CIT (A) has rightly deleted the additions made by the Assessing Officer.

Learned counsel for the appellant has not been able to cite any law contrary to the above.

In view of the above discussion, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

31.01.2023
G Arora

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No