

ORDER

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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/120/2011
COMMISSIONER OF INCOME TAX, KOLKATA-III, KOLKATA
VERSUS
COOKME (SPICE) PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 1st April 2024.

Appearance:

Ms. Smita Das De, Advocate
Mr. Prithu Dudheria, Advocate
... for the appellant.

1. Heard Smt. Smita Das De, learned senior standing counsel for the appellant.
2. This appeal has been admitted on the following substantial question of law:-

“Whether the learned Tribunal below committed substantial error of law in affirming the previous, contained in section 269 SS and Section 209 T of the Income Tax Act, to the fact of the present case simply because the parties are two sister concerns by overlooking the first proviso to the said section where sister concerns do not come within the exception?”

3. The assessing officer imposed penalty of Rs.5,86,05,738/- upon the respondent assessee under Section 271D of the Income Tax Act, 1961

[hereinafter referred to as 'the Act, 1961'], on the ground that loans over Rs.20,000/- were taken in cash by the respondent assessee. The CIT (A) allowed the appeal of the assessee and set aside the penalty. The Tribunal upheld the order passed by the CIT(A). The facts noted and the findings recorded by the ITAT in the impugned order dated 16.11.2010 are reproduced below:-

"3. Briefly stated facts of the case are that in the beginning of the year the assessee was to pay Rs.3,02,58,244/- to M/s. Krishna Chandra Dutta (Cookme) Pvt. Ltd. during the year the assessee received Rs.3,45,09,365/- from M/s. Cookme and repaid Rs.81,01,870/- and the closing balance stood at Rs.5,66,65,738/-. Out of the above amount received, Rs.3,31,80,000/- was received in cash and Rs.9,40,000/- was repaid in cash. The Assessing Officer was of the view that the amount received in cash and repaid in cash were made in violation of section 269SS and sec.269T of the I.T. Act and hence imposed penalties u/s. 271D and 271E vide two separate orders both dated 31.08.2006. In appeal, the Ld. CIT(A) deleted the penalty levied by the Assessing Officer u/s. 271D and 271E of the I.T. Act. Aggrieved by the said order, now the revenue is in appeals before us.

...

6. After hearing the rival parties, perusing the material available on record, and the case laws cited by the parties, we find that while deleting the penalty the Ld. CIT(A) has dealt the issue as under: "I have carefully considered the assessment order submissions made by the appellant and the provisions of section 269SS, 271D, 269T, 271E of the I.T. Act and the different decisions and circulars of CBDT cited above.

I find that the appellant and M/s. Krishna Chandra Dutta (Cookme) Pvt. Ltd. are sister concerns. Mr. Sarabjit Dutta and Mr.

Surojit Dutta hold majority shares in both the companies. The appellant maintains a current account with M/s. Krishna Chandra Dutta (Cookme) Pvt. Ltd. It takes advances from said M/s. Krishna Chandra Dutta (Cookme) Pvt. Ltd. time to time for meeting the business needs. The advance received does not bear any interest and also does not contain any stipulation with respect to time for return of such advance. Ahmedabad Bench in the case of ACIT vs. G.P. Taparia (2004) 84 TTJ (Jd) 34 and Mumbai Bench in the case of Karnataka Ginning & Pressing Factory vs. Jt. CIT (2001) 72 TTJ (Mumbai) 307 have held that the money received or paid in the above circumstances specially between sister concerns are current account transactions and at best can be treated in the nature of advance and not loan or deposit as contemplated in sec. 269SS or 269T.

Further the advances received by the appellant were from proper source and there is no doubt the genuineness of the transactions. In such circumstances Jodhpur Bench in the case of ACIT v. Alfa Hydromec Pvt. Ltd. 99 TTJ 405 (Jd) has held that penalty u/s. 271D should not be levied. In view of above, respectfully following the decisions cited above and keeping in mind the intent and purpose of incorporating sec. 269SS and sec. 269T as explained by CBDT Circular no.387 reported in 152 ITR (St.) 1, I delete the penalty levied by the A.O. u/s. 271D and sec. 271E.”

In view of the above and in the absence of any contrary material brought on record by the revenue authorities, we do not find any necessity to interfere with the order of the Ld. CIT(A) and the same is hereby upheld. Besides, the Ld. CIT(A) has deleted the penalty by following the decisions of the ITAT, Ahmedabad Bench, Mumbai Bench, Jodhpur Bench and the CBDT Circular also. Therefore, the appeals filed by the revenue are dismissed.

7. *In the result, the appeals of the revenue are dismissed.*

4. The facts and findings as recorded in the afore-quoted paragraphs 3 and 6 of the impugned order of the Tribunal have not been disputed before us. That apart, the findings recorded in the impugned order of the Tribunal are findings of fact based on consideration of relevant evidences on record. The orders passed in other cases are with regard to the circulars of CBDT. The CIT(A) has lawfully deleted the penalty under Section 271D of the Act, 1961 and the Tribunal has lawfully upheld the order of the CIT(A). Under the circumstances, we do not find any illegality in the impugned order of the ITAT. The appeal lacks merit and, therefore, deserves to be dismissed.
5. For all the reasons afore-stated, the appeal is dismissed. The substantial question of law is answered accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar