IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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2024:PHHC:042958-DB

ITA-289-2007 (O&M)
Date of Decision:- 01.04.2024

M/s R.K.Jewellers

...Appellant

Vs.

Commissioner of Income Tax, Central Circle, Ludhiana

ITA-554-2007 (O&M)
Date of Decision:- 01.04.2024

...Respondent

Hazara Singh

...Appellant

Vs.

Commissioner of Income Tax-Central Circle Ludhiana

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS.JUSTICE SUDEEPTI SHARMA

Present: Mr.Kaplish Chawla, Advocate for the appellant.
Mr.Saurabh Kapoor, Senior Standing Counsel for the respondent.

<u>SANJEEV PRAKASH SHARMA, J. (Oral)</u>

By this common order, we dispose of the aforesaid two appeals as they have arisen out of the same impugned order.

2. The aforesaid appeals have been preferred by the appellant assailing part of the order passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, whereby the appeal filed by the CIT bearing No.IT (S.S.) A No.31 (ASR)/2004, was allowed.

3. This Court vide order dated 19.10.2007 while admitting the appeals, framed the following questions of law which are as under:-

> *"1. Whether on the facts and circumstances of the case, the Tribunal had erred in law by failing to appreciate that now*

> *when Section 158 BFA(2) of the Income Tax Act, 1961 as had been brought on the statute with effect from 1.1.1997 expressly mentions the cases and circumstances in which penalty can be imposed, and there is no mention of the penalty imposable if there is violation of the provisions under Section 269SS of the 'Act', therein no penalty under Section 271D could be imposed on the appellant?*
> *2. Whether on the facts and circumstances of the case, the Tribunal erred in law by not appreciating that no penalty under Section 271D read with Section 273B of the 'Act' could be levied on the appellant, specifically when the alleged transactions themselves were undisclosed?"*

4. We find that the second question inherently would be answered on the decision of the first.

5. Learned counsel for the respondents, however, states that the penalty be imposed in relation to the undisclosed income found during search as per Section 271D of the Act as existed at the relevant time. Learned counsel for the appellant submits that the undisclosed income was declared during search, therefore, no proceedings under Section 158 BFA(2) were required to be initiated as the undisclosed income would not fall within the meaning of Section 269(SS) of the Act and consequently, no penalty could have been imposed in term of Section 271D of the Act.

6. We have considered the submissions and to examine the aforesaid question, it would be necessary to delve on the facts of the case.

7. A search and seizure operation was carried out at the residential and business premises of the assessee and during which, certain documents were found and seized. The assessee filed ITR declaring his income as Rs.16,70,000/- and the assessment resulted in a total of assessed income is Rs.36,13,400/-. Thus, the disclosed profit on the undisclosed turnover was found to be Rs.19,43,400/- which was found

to be on account of Pawning business and the profit declared by the asseseee on the said basis. The submissions of the learned counsel for the appellant would rest on the interpretation of Section 269(SS) as well as 271(d) as it existed at the relevant time and for the said purpose it would be apposite to quote the said Section which reads as under:-

> *"269SS. No person shall take or accept from any other person (herein referred to a the depositor), any loan or deposit or any specified sum, otherwise than by a account payee cheque or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], 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, , loan or deposit or specified sum taken or accepted earlier by such person f 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:"*
>
> *271D. (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."*

8. The question therefore would arise as to whether the amount which has been mentioned in the book of accounts of which the profit has been earned, is a business wherein the amount has been received by way of loan or otherwise. The word "Pawn" has been defined in Black's Law Dictionary at page No.1308 which reads as under:-

> *"Pawn, n (15c) 1. An item of personal property deposited as security for a debt; a pledge or guarantee. In modern usage, the term is use restricted to the pledge of jewels and other personal chattels to pawnbrokers as security for a small loan. 2. The act of depositing personal property in this*

> *manner. 3. The condition of being held on deposit as a pledge. 4. PIGNUS (1) CF bailment."*

09. The pledging of old jewellery to a pawn broker as a security for loan would come within the meaning of Section 269 (SS) of the Act.

10. Thus, we are satisfied that the Assessing Officer has correctly treated the amount disclosed through search and seizure by way of additional income through pawning as being such loan was deposited inconformity with Section 269 (SS) of the Act and the provisions of Section 269 (SS) were not complied with as Section 269 (SS) specifically bar such accepting or giving loans or allowing deposit otherwise than by account payee cheque or bank draft for the amount of ` 20,000/- or more. The logical corollary from above automatically invites action under Section 271D of the Act. The question of law as determined hereinabove is, therefore, answered in favour of the Revenue and their orders are upheld.

11. The aforesaid appeals are therefore, dismissed.

12. Application(s), if any, stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

01.04.2024 **(SUDEEPTI SHARMA)**
sd **JUDGE**

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