

In the High Court of Judicature at Madras

Dated: 23.12.2014

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**

and

The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) Nos.939 to 941 of 2014
& M.P.Nos.1 and 1 of 2014

The Commissioner of Income Tax
Chennai

.... Appellant in the above T.CAs

Vs.

M/s.Object Frontier Software Pvt. Ltd.
38, Sriram Nivas, V.K.Iyer Road,
Mandaveli, Chennai – 600 028.

.... Respondent in the above T.CAs

APPEALS under Section 260A of the Income Tax Act against the order dated 23.09.2011 made in I.T.A.Nos.1446 to 1448/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench.

For Appellant : Mr.T.R.Senthil Kumar

Standing Counsel for Income Tax

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

“ 1. Whether on the facts and in the circumstances of the

case, the Tribunal was right in holding that the share application money received in cash is in the nature of deposit and not in contravention to the provisions of Section 269 SS and hence penalty under Section 271D of the Act is not attracted?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee had reasonable cause in holding a bonafide belief that the money accepted was neither loan nor deposit and therefore the penalty under Section 271D of the Act is to be deleted?

3. Whether based on the material evidences before the Tribunal, it could have come to the conclusion that the assessee had reasonable cause in holding a bonafide belief that the money accepted was neither loan nor deposit?

2. The assessment in this case relates to the assessment years 2002-03, 2003-04 and 2004-05. The assessee company during the assessment years in question had accepted the share application money in cash from various persons. The Assessing Officer was of the view that the money received as share application was of the nature of the deposit in the hands of the company. Hence, a show cause notice was issued on the ground that the assessee had violated the provisions of Section 269 SS by accepting the share application money instead of account payee cheque or account payee draft. In response to the show cause notice issued, the assessee filed objections. Taking into account the objections filed by the assessee, the Assessing Officer passed an order levying penalty under Section 271D of the

Income Tax Act. Aggrieved by the order of the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who after following the decision of this Court reported in **304 ITR 417 (CIT V. Rugmini Ram Raghav Spinners Private Limited)**, allowed the appeals.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue has filed appeals before the Income Tax Appellate Tribunal. The Tribunal after hearing both the parties, dismissed the appeals, following the decision of this Court cited supra, holding that the Revenue has not doubted the genuineness of the transaction and the assessee had a bonafide belief that share application money received was neither loans or deposits. The Tribunal further held that when rigours of Section 269SS of the Income Tax Act cannot be applied, penalty could not be levied under Section 271D of the Income Tax Act.

4. As against the order passed by the Tribunal, the Revenue is before this Court raising the above-mentioned substantial questions of law.

5. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

6. In the decision reported in **304 ITR 417 (CIT V. Rugmini Ram Raghav Spinners Private Limited)**, this Court had an occasion to consider the similar issue, wherein this Court held as follows:

".....if the assessee proves that there is a reasonable cause, he is not subject to levy of penalty. The case of the assessee is that, the amount received by the assessee is only for the purpose of allotment of shares and it is not a deposit or loan. In this case, the reasonable cause is that the assessee was under the bona fide belief that the money received is only for the purpose of allotment of shares. Also, there is no material or evidence or any compelling reason produced by the Revenue to prove that the money received is a deposit or loan. The first appellate authority as well as the Tribunal have come to a correct conclusion after accepting the explanation offered by the assessee. It is a question of fact and the order of the Tribunal is not a perverse one. The concurrent finding given by both the authorities below is based on valid materials and evidence. In the case of CIT v. P. Mohanakala [2007] 291 ITR 278, the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference."

7. On an identical issue, this Court, by order dated 03.12.2014 in T.C.(A)Nos.982 and 983 of 2014, following the above-said decision, dismissed the appeals filed by the Revenue holding that the assessee was under the bona fide impression that the money received was only towards

allotment of shares and it is not a loan or deposit.

8. In the present case also, the assessee was under the bona fide impression that the money received was only towards allotment of shares and it is not a loan or deposit. Hence, following the decision of this Court cited supra, we find no question of law much less any substantial question of law arises for consideration in this appeal.

9. Accordingly, the order of the Tribunal stands confirmed and the above Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.Nos.1 and 1 of 2014 are also dismissed.

Index :Yes/No

(R.S.,J) (R.K.,J)

Internet:Yes/No

23.12.2014

sl

To

1. The Income Tax Appellate Tribunal, Chennai 'D' Bench.
2. The Commissioner of Income Tax (Appeals), V, Chennai.
3. The Assistant Commissioner of Income Tax, Company Range V
Chennai.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

SI

T.C.(A) Nos.939 to 941 of 2014
& M.P.Nos.1 and 1 of 2014

23.12.2014