

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE MR.JUSTICE **R.KARUPPIAH**

Tax Case (Appeal) No.1490 of 2007

M/s.Nandhi Dhall Mills
42, Narashimha Chetty Road,
Shevapet, Salem - 636 002.

.. Appellant

versus

The Commissioner of Income-tax
Salem.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 31.1.2006 made in I..T.A..No.471/Mds/2003 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 1998-1999.

For appellant : Mr.Quadir Hoseyn

For respondent : Mr.J.Narayanasamy
Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This Tax Case (Appeal), filed by the assessee as against the order of the Income Tax Appellate Tribunal, was admitted by this Court on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was not right in rejecting the assessee's contention that Form 3CD wherein the details regarding loan transactions required to be disclosed (forming part of assessment records) being the foundation of penalty proceedings, the penalty levied on 28.3.2000 was barred by limitation with reference to the order passed under Section 143(1)(a) on 25.3.1999?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the penalty especially when the assessee's turnover was 4.97 crores and the amount borrowed on the five occasions in the year involved only a sum of Rs.6.60 lakhs, this having constituted a mere 1.3% of the total transactions, the violation was only venial in nature not warranting levy of penalty in accordance with the Supreme Court decision in 83 ITR 26?

3. Whether the Tribunal was justified in not advertng to the reason adduced that the assessee had to resort cash borrowals to settle pending bills on that date itself in order to book further consignment of dhall to take the benefit of competitive prices available on that date?

2. It is submitted by the learned counsel appearing for the assessee that the assessee is not pressing the first substantial question of law admitted by this Court. He has also made an endorsement to that effect. Hence, it is not necessary to go into the first substantial question of law. Accordingly, we are deciding this appeal on the second and third substantial questions of law alone.

3. The brief facts of the case are as follows:

The assessee is engaged in the business of trading dhall. During the scrutiny of the report of the Auditor filed along with the return for the assessment year 1998-99, it was found that the assessee had accepted loan of Rs.6,60,000/- in cash, from one A.Kumar, husband of one of the partner Smt.K.Jayanthi and son of partner Smt.Kamakshiammal, in contravention of the provision under Section 269SS of the Income Tax Act. Hence, show cause notice was issued to the assessee calling for explanation for the acceptance of loan in cash. In response to the said show cause notice, the assessee had filed reply. After considering the explanation offered by the assessee, but not satisfied with the explanation, penalty proceedings was initiated under Section 271D of the Income Tax Act. For better appreciation of facts, it is necessary to extract herein the relevant

portion of the order passed under Section 271D of the Income Tax Act:

" 1) It is stated in the written explanation that the lender, Sri.A.Kumar, is the husband of the partner, Smt.K.Jayanthi and son of partner, Smt.Kamakshiammal. The loans were taken from him in cash and the amounts so received were deposited into the current account of the assessee in Central Bank of India so as to have adequate cash balance in the account to prepare demand drafts in the names of the creditors from whom raw materials were purchased. It has been argued that the turnover of the firm for the year ended 31.3.98 has been more than Rs.4.97 crores and taking into account the above factor in a business volume of this magnitude due to business exigencies and for meeting the commitments of the assessee firm the above borrowals have been made in cash which amounts to a reasonable cause within the meaning of Section 273B of the Income-tax Act. It is contended that since the receipts were made in cash in order to meet business exigencies and the bonafides of these transactions are clearly established, penalty u/s 271D should not be levied. As is clear from the explanation, all the loans were accepted in cash to make cash deposits in the assessee's bank account so that demand drafts could be prepared in the names of the creditors. It is seen that all the creditors are regular suppliers of the assessee from whom the assessee makes frequent credit

purchases, and there was no urgency to make the demand drafts on the dates on which the same were made. Had the loans been accepted in crossed cheques or demand drafts and deposited in the assessee's bank account, there would have been a delay of a day or two in preparing the demand drafts for the creditors. This delay of a couple of days would not have affected the business of the the assessee in any manner. Bonafides or the genuineness of the transaction has nothing to do with the provisions of Section 269SS. Only because it was convenient for the assessee to accept the loans in cash, it could not be held that it had a reasonable cause for its failure to comply with the provisions of Section 269SS. It is for the assessee to manage its business affairs in such a manner that the provisions of law as laid down u/s 269SS are not violated.

2).....

3).....

4) As per the provisions of Section 273B, penalty u/s 271D will not be imposed if the assessee proves the existence of a reasonable cause for its failure to comply with the provisions of Section 269SS. In this case, the assessee has miserably failed to prove any such reasonable cause for which it had contravened the provisions of Section 269SS.

Keeping in view the above discussions and since the assessee has failed to show any reasonable cause for its failure to comply with the provisions of Section 269SS, I proceed to levy a penalty of Rs.6,60,000/-

(Rupees Six lakhs and sixty thousands only), being equal to the total amount of loans accepted in cash, u/s 271D of the Income-tax Act, 1961."

4. Being aggrieved by the initiation of penalty proceedings, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who set aside the penalty holding as follows:

" On the facts and circumstances of the case, it is held that 271D is not leviable as demand draft were found to be genuine, confirmation letters have been filed and the identity of the creditors have been placed on record. Concurring with the decisions of the Honourable Tribunal and applying to the facts of our case, I deem it necessary to delete the penalty or Rs.6,60,000/- imposed u/s 271D of the I.T. Act."

5. As against the said order of the Commissioner of Income Tax (Appeals) dropping the penalty proceedings, the Revenue preferred an appeal before the Income Tax Appellate Tribunal.

6. The Tribunal after considering the submissions made on both sides, reversed the findings of the Commissioner of Income Tax (Appeals), thereby confirmed the penalty proceedings in the following manner:

" 9. We have heard the rival contentions and perused the relevant records. We find that the prime consideration for the Learned CIT(A) to delete the penalty is that the creditors were regular suppliers for the assessee and identity of the transactions is established. As regards exigencies of the situation in which the cash transfers were taken, it is noted that all the loans were accepted in cash to make cash deposits in the assessee's bank account so that demand drafts could be prepared in the name of the creditors. The A.O. has observed that all the creditors were regular suppliers to the assessee from whom the assessee made frequent credit purchases and there was no urgency to make the demand drafts on the dates on which the same were made. The A.O. Had further noted that had the loans been accepted in crossed cheques or demand drafts and deposited in assessee's bank account, there would be a delay of a day or two in preparing the demand draft for the creditors. This delay of a couple of days would not have affected the business of the assessee in any manner. Considering the finding of the A.O., we are in concurrence with the opinion that the assessee has not made out any compelling situation in which he was compelled to take cash loans due to business exigencies. Instead, the assessee has made a case on the bonafides or genuineness of the cash transfers and the identity of the persons to claim relief from the rigours of the penalty provisions of Section 271D.

10. In this regard, we find that the plank of the

genuineness of transfers relied upon by the Ld. CIT(A) to grant relief cannot be sustained as it is trite law that bereft of reasonable cause, the assessee cannot be exonerated from the rigorous penalty. It must be demonstrated beyond an iota of doubt that the cash loans were accepted under compelling circumstances.

11. In this regard, the legal position has been summed up in 94 ITD 281 by the Third Member decision in the Pune Bench of I.T.A.T. in the case of I.T.O. Vs. Sunil M. Kasliwal. In this case, it was held as under:-

" The assessee may be exonerated from the rigour of penalty under Section 271D, provided it is established that there existed a reasonable cause for not complying with the prescription of Section 269SS. The mandate given under Section 269SS is clear. Any departure from the said mandate invites penalty as is envisaged under Section 271D. It is clearly laid down in the section that no person shall after 30-6-1984 take or accept from any other person any loan or deposit otherwise than by any account payee cheque or account payee bank draft, if the amount of loan or deposit or the aggregate amount of such loan or deposit is Rs.20,000 or more. This panoply of law was brought on the statute to counter the tax evasion. Therefore, it is not sufficient to say that simply the transaction was genuine, so Section 269SS is not applicable. One cannot accept such proposition of law. There is no ambiguity in the language of the provision. As such, there is no need to apply the purposive theory of interpretation. Subject to the existence of mitigating

circumstances penalty cannot be deleted. The assessee must prove beyond the shadow of doubt that there existed a reasonable cause for not complying with the conditions contained in section 269SS. Circumstances under which the cash was accepted must be explained. Unfortunately, no cogent material was produced in that direction."

12. Considering the present case on the anvil of aforesaid discussions, we find that there was no reasonable cause prevailing which can warrant the deletion of the penalty. Under the circumstances, we set aside the order of the Learned CIT(A) and uphold the order of the A.O., sustaining the penalty."

7. Aggrieved by the order of the Tribunal, the assessee is before this Court.

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

9. On a perusal of the orders of the Authorities below we find that the core issue involved in this appeal is whether the explanation given by the assessee has a reasonable cause to embark on such

transaction, which would fall within the provisions of Section 269SS of the Income Tax Act. We find that though several documents have been submitted by the assessee, there is nothing to show that there was urgency for the assessee to avail the loan in cash in violation of Section 269SS and that the Assessing Officer has given a detailed reasoning as to why he finds that such a transaction would not come under the exception clause of Section 271D of the Income Tax Act. The Tribunal has confirmed the said finding of fact.

10. Being a pure finding of fact, we find no reason to interfere with the order of the Tribunal. In fact, the assessee himself has relied on the decisions of this Court in the case of ***Commissioner of Income -Tax V. Balaji Traders*** reported in ***(2008) 303 ITR 312 (Mad)*** and in the case of ***Commissioner of Income-Tax V. Deccan Designs (India) P. Ltd.*** reported in ***(2012) 347 ITR 580 (Mad)***, wherein this Court clearly held that unless there is any inconsistency in the finding of fact arrived at by the Tribunal or the Authorities concerned, the Court should not interfere with such a finding of fact.

11. In the case of ***Commissioner of Income -Tax V. Balaji Traders*** reported in ***(2008) 303 ITR 312 (Mad)***, this Court held as follows:

"Once the said finding is arrived at by the Tribunal on the facts, as held by the Delhi High Court in *CIT v. Parma Nand* [2004] 266 Itr 255, which was followed by this Court in *CIT v. Ratna Agencies* [2006] 284 ITR 609 that the finding recorded by the Tribunal as to the reasonable cause is essentially a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this Court to interfere with such a finding of fact."

12. For the foregoing reasons, we find no reason to interfere with the order of the Tribunal and the question of law Nos.2 and 3 are answered against the assessee and in favour of the Revenue. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Index:Yes/No
Internet: Yes / No

(R.S.,J.) (R.K.,J.)
16.02.2015

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

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To

1. The Income Tax Appellate Tribunal, Madras 'D' Bench.

2. The Commissioner of Income Tax (Appeals), Salem.
3. The Joint Commissioner of Income Tax, Salem Range, Salem.

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