

\$~R-181 & R-182

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: December 12, 2014

+ ITA 221/2003

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr.Balbir Singh, Sr. Standing
Counsel with Mr.Abhishek
Singh Baghel, Advocate

versus

M/S NATIONAL CLOTHING CO.

..... Respondent

Through Mr.Prakash Kumar, Advocate

+ ITA 597/2005

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr.Rohit Madan, Sr. Standing
Counsel with Mr.Ruchir Bhatia,
Advocate

versus

M/S NATIONAL CLOTHING CO.

..... Respondent

Through Mr.Prakash Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

ITA 221/2003

This appeal by the Revenue under Section 260A of the Income

Tax Act, 1961 ('Act' in short) was admitted for hearing vide order dated 21.09.2004 on the following substantial question of law:-

“Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting the penalty imposed under Section 271D of the Income Tax Act, 1961?”

2. The respondent assessee had received loans of Rs.33,75,842/- and Rs.20,00,000/- respectively on 06.06.1997 from M/s Shakuntla Export House Pvt. Ltd. and K.N.Bhalla. The Assessing Officer rejected the submission that the aforesaid amounts being mere book entries did not result in violation of Section 269SS of the Act. The contention that entry of Rs.20,00,000/- involved credit to the account of M/s Quality Clothiers and debit to the account of K.N Bhalla and, therefore, does not amount to acceptance of loan or deposit was also rejected. The Assessing Officer held that book entries were covered under the ambit of Section 269SS of the Act. Penalty of Rs.53,75,840/- under Section 271D of the Act was imposed.

3. In the first appeal, the Commissioner of Income Tax (Appeals) sustained the penalty in respect of book entry of Rs.33,75,842/- but restored for fresh examination, the entry relating to K.N Bhalla, in view of the submission that the debit entry in the name of K.N Bhalla did not create any liability towards any new loan or deposit. The submission was that it was a mere transfer entry with name of K.N

Bhalla being substituted for M/s Quality Clothiers.

4. On further appeal, the assessee succeeded before the Tribunal by the impugned order. Penalty imposed under Section 271D of the Act in respect of book entry of Rs.33,75,842/- in the name of M/s Shakuntla Export House Pvt. Ltd. has been deleted on the ground that merely passing a journal entry would not lead to violation of Section 269SS of the Act as there was no transfer of money. There was no cash transaction.

5. The issue in question is covered by decision of this Court dated 20.11.2014 in ITA No.33/2002 titled ***Commissioner of Income Tax vs. M/s Ruchika Commercials and Investment Pvt. Ltd.*** This decision follows two earlier decisions of this Court in ***Commissioner of Income Tax vs. Noida Toll Bridge Co. Ltd. [2003] 262 ITR 260 (Delhi)*** and ***Commissioner of Income Tax-VI vs. Worldwide Townships Project Ltd. [2014] 367 ITR 433 (Delhi)***. In the said decisions, in view of the language of Explanation to Section 269SS, it has been held that the provision would apply to loan or deposit of money, and not mere formal entries resulting in debit or credit. Other reasons and grounds have been elucidated.

6. In view of the aforesaid legal position, the question of law has to be answered in favour of the respondent assessee and against the appellant revenue. The appeal is accordingly disposed of.

ITA 597/2005

7. The second appeal bearing ITA No.597/2005 was admitted for hearing vide order dated 16.08.2005 on the following substantial question of law:-

“Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting the penalty imposed under Section 271D of the Income Tax Act, 1961?”

8. This appeal also relates to assessment year 1998-99 and arises from the remand order passed by the Commissioner of Income Tax (Appeals) in relation to entry of K.N Bhalla. We have already noted the relevant facts in this regard above.

9. Upon remand, the Assessing Officer re-imposed penalty under Section 271D after duly noticing the fact that there were two cross entries in the case of M/s Quality Clothiers and K.N Bhalla and the amount outstanding in the name of M/s Quality Clothiers was treated as outstanding against K.N Bhalla. The Assessing Officer held that this amounts to violation of Section 269SS and penalty of equal amount i.e. Rs.20,00,000/- should be imposed.

10. The aforesaid penalty was deleted by the Commissioner of Income Tax (Appeals) who held that the entry in question was a mere book entry and the respondent assessee had debited the account of K.N Bhalla and credited the account of M/s Quality Clothiers.

11. Aggrieved, Revenue preferred an appeal but the same has been dismissed by the Tribunal in the impugned order dated 27.10.2004. For the reasons set out in our decision dated 20.11.2014 in ITA No.330/2002 *Commissioner of Income Tax vs. M/s Ruchika Commercials and Investment Pvt. Ltd.*, the question of law has to be answered in favour of the respondent assessee and against the appellant revenue.

The appeal is accordingly disposed of.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 12, 2014/km