

In the High Court of Judicature at Madras

Dated: 03.12.2014

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

Tax Case (Appeal) Nos.982 and 983 of 2014
& M.P.No.1 of 2014

The Commissioner of Income Tax
Chennai

.... Appellant in both T.CAs

Vs.

M/s.Pride Remedies Private Ltd.
8/2, 3rd Street, Gill Nagar,
Choolaimedu
Chennai - 600 094.

.... Respondent in both T.CAs

APPEALS under Section 260A of the Income Tax Act against the order dated 16.12.2010 made in I.T.A.Nos.1686& 1687/Mds/2010 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 question of law:

" Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the penalty order passed under Section 271D of the Income Tax Act?"

2. The assessment in this case relates to the assessment years 2001-02 and 2002-03. 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 for both the assessment years. 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)**, held as follows:

"19. In view of the above discussion, it is hereby held that share application money received by way of transfer of shares held by Smt.Baby Rani and Shri Anand Shah would be outside the scope of Section 269SS. The amounts of Rs.1,05,000 received as share application money being less than Rs.20,000 from each of

the 8 individuals would also be outside the scope of Section 269SS. In view of the jurisdictional Madras High Court decision in 285 ITR 221 and 304 ITR 417, it is hereby held that the ratio of the Jharkhand High Court decision in 275 ITR 399 would not be applicable to the facts of the assessee's case and share application money received by the assessee company would not be in the nature of a deposit as understood by the provisions of Section 269SS. In any case, on the facts of the assessee's case, it is also hereby held that the assessee had a reasonable cause for committing the default under Section 269SS, if any, as understood by the provisions of Section 273B. Accordingly, penalty imposed in terms of Section 271D for Assessment Years 2001-02 and 2002-03 is hereby deleted in its entirety."

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 as follows:

"5. In this context, it has been considered by the CIT(A) in CIT vs. Rugmini Ram Raghav Spinners Ltd., 304 ITR 417. The Hon'ble jurisdictional Madras High Court held in this case (304 ITR 417) that share application money is neither deposit nor loan and therefore, provisions under section 269-SS and section 269-T have no application and consequently, there can not be penalties under section 271-D and section 271-E. In view of the above, we find that these two appeals filed by the Revenue are liable to be dismissed."

4. As against the order passed by the Tribunal, the Revenue is before this Court.

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. In the present case, 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. Accordingly, the order of the Tribunal stands confirmed and both the Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

Index :Yes/No

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

Internet:Yes/No

03.12.2014

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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.982 and 983 of 2014
& M.P.No.1 of 2014

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