

*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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I.T.T.A. No. 231 of 2003

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*(Judgment of the Bench delivered by
the Hon'ble Sri Justice L. Narasimha Reddy)*

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%12-11-2014

#Gururaj Mini Roller Flour Mills

..appellant

Vs.

\$The Addl. Commissioner of Income-tax,
Range-I, Hyderabad.

..Respondent

!Counsel for the appellant : Sri Y. Ratnakar

^Counsel for the Respondent : Sri S.R. Ashok, Sr. Counsel

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? Cases referred

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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I.T.T.A. No. 231 of 2003

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JUDGMENT: *(Per the Hon'ble Sri Justice L. Narasimha Reddy)*

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The appellant is a partnership firm. Its partners have also brought into existence some other firms, such as M/s Venkateshwara Modern Rice Mill, M/s Yellaiah Gupta Transport. The appellant submitted its returns, year after year, and was being assessed to tax. On the return submitted for the assessment year 1992-93, an order under Section 143 of the Income Tax Act (for short 'the Act') was passed on 29-03-1995. However, on the allegation that certain payments, exceeding Rs.20,000/- were made in cash during that assessment year, in violation of Section 269-T of the Act, a show cause notice was issued proposing to levy penalty under Section 271-E of the Act. It was alleged that a sum of Rs.2,48,300/- was paid to M/s Yellaiah Gupta Transport and Rs.24,000/- to Smt. D. Sarada Mohan, through cash.

The appellant submitted its explanation stating that it was only a book adjustment to the sister concern, M/s Yellaiah Gupta Transport, and no cash was paid. As regards the payment to Smt. Sarada Mohan, it was stated that her husband was the legal advisor, and with a view to help her, on account of bereavement, due to

his death, the amount was paid.

In respect of assessment year 1993-94, it was alleged that Rs.1,99,573/- was paid to M/s Yellaiah Gupta Transport in contravention of Section 269-T and a sum of Rs.1,23,000/- was received from the said firm, in contravention of Section 269-SS of the Act. Notices, referable to Sections 271-E and D respectively, were issued. Explanations were also submitted.

The Assessing Officer passed three separate orders dated 27-03-1997, levying penalty as proposed through the show cause notices. Aggrieved by the said order, the appellant filed three appeals before the Commissioner of Income Tax (Appeals)-I Hyderabad. The appeals were rejected through separate orders dated 09-12-1997. Thereupon, the appellant filed I.T.A.Nos.151 to 153/HYD/98, before the Hyderabad Bench of the Income Tax Appellate Tribunal. The appeals were dismissed by the Tribunal through a common order dated 30-06-2003. The same is challenged in this further appeal, under Section 260-A of the Act,

by raising the following questions of law:

1. "Whether the levy of penalty of Rs.2,72,300/- under section 271E(1) for assessment year 1992-93 is justified in the facts and circumstances of the case.
2. Whether the levy of penalty of Rs.1,99,573/- under section 271E(1) for assessment year 1993-94 is justified in the facts and circumstances of the case.
3. Whether the levy of penalty of Rs.1,23,000/- under section 271D(1) for assessment year 1993-94 is justified in the facts and circumstances of the case.
4. Whether the payments made into the account of Yelliah Gupta Transport account amounting to Rs.2,48,300/- for the year ended 31.3.92 and Rs.1,99,573/- for the year ended 31.3.93 could be

said to be repayment of deposit and whether the provisions of section 269T are attracted.

5. Whether the payment to Smt. Sarada Mohan amounting to Rs.24,000/- during the year ended 31.3.92 relevant to assessment year 1992-93 could be said to be repayment of deposit and whether the provisions of section 269T are attracted.
6. Assuming while denying there was any failure, whether the explanation given by the assessee for the payment into the account and withdrawal from the account of Yellaiah Gupta Transport account can be said to be covered by reasonable cause attracting the provisions of section 273B of the Income Tax Act.
7. Whether the provisions of section 271D(1) and Section 271E(1) give any discretion in the matter of levy of quantum of penalty or these sections make it mandatory that the penalties levied should be at 100% of the amount paid, borrowed or deposited without any discretion for reduction.
8. Whether the conclusion of the Tribunal that the decision of the Supreme Court in the case of Arjun Ghaswala reported in 252 ITR at page 1 has impliedly over ruled the decision of the High Court in ITD vs. Laxmi Enterprises reported in 185 ITR 595 is correct”.

Sri Y. Ratnakar, learned counsel for the appellant submits that certain cash adjustments had to be made, between the appellant and its sister concerns, particularly in view of the dissolution of the firm, M/s Venkateshwara Rice Mill, and the Assessing Officer himself did not find fault with such adjustment, when he passed orders under Section 143(3) of the Act.

He contends that the very fact that proceedings were initiated under Section 271-E, on the one hand, and Section 271-D, on the other hand, in relation to the same agencies, discloses that the so-called payment and receipt was nothing, but a book adjustment. He further submits that payment of small amount to the widow of the Counsel was treated as a violation of Section 269-T of the Act and penalty was imposed. Learned counsel submits that

none of the authorities have taken into account, the mandate under Section 273-B of the Act, and the penalty was imposed indiscriminately.

Sri S.R. Ashok, learned Senior Counsel for the respondent, on the other hand, submits that the tax audit report in relation to the appellant revealed that several transactions, otherwise than through crossed cheques, as required under law, have taken place and accordingly proceedings were initiated. He submits that though a plea was raised to the effect that it was only a book adjustment, the same was not substantiated, and accordingly it was treated as a payment of cash.

In the return submitted by the appellant for the assessment years, referred to above, the details of various transactions were mentioned. It has already been mentioned that three partnership firms were constituted, by almost with the same persons. One of the firms, i.e. M/s Venkateshwara Rice Mill is said to have been dissolved. It is a different matter that the prescribed procedure in this behalf was not followed. The Assessing Officer did not find any illegality in the internal adjustment of the funds, or accounts, among the firms. It was almost by way of reopening of the orders of assessment, that notices under Sections 271-D and E were issued.

The cash transactions by the assesses, or the public, in general, were treated as one of the devices to create black, or unaccounted money, since it becomes difficult to verify the same. As a step to curb this, the Parliament amended Section 40-A of the Act, by introducing sub-section (3). It mandates that where an individual incurs expenditure exceeding a sum of Rs.20,000/-, payment thereof

shall be through crossed cheque, or demand draft, and any deviation therefrom shall entail in denial of reduction to the extent of 20%. Further steps in that direction were taken by introducing Chapter XX-B, through Income Tax (Second Amendment) Act, 1981. This Chapter comprises of Sections 269-SS, 269-T and 269-TT. Corresponding provisions in Chapter XXI, relating to penalties, were also included and came to be renumbered as Section 271-D and 271-E.

Section 279-SS prohibits any person from accepting loan or deposit, otherwise than by an account payee cheque or draft, if the aggregate of the amount exceeds Rs.20,000/-.

The Government Banking Companies established by the State or Central Governments, etc., are kept outside this prohibition.

The provision reads,

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“Mode of taking or accepting certain loans and deposits.

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269-SS. No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,--

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from 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), twenty thousand rupees or more.”

Section 271-D prohibits a company or cooperative society from repaying to any person, any deposit, otherwise than through account payee cheque or account payee Bank draft, if the amount exceeds Rs.10,000/-. Here again, certain exceptions are provided. Penal provisions corresponding to Section 269-SS and Section 269-T are Sections 271-D and 271 E. They read as under:

“Penalty for failure to comply with the provisions of section 269 SS.

271D. (1) If a person takes or accepts any loan or deposits 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 so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Deputy Commissioner.

Penalty for failure to comply with the provisions of section 269 T.

271E. (1) If a person repays any deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the deposit so repaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Deputy Commissioner.”

The allegation against the appellant is that it received two deposits in contravention of Section 269-SS and made two payments in contravention of Section 269-T of the Act, in a span of three assessment years. Out of them, one payment is to a person by name Smt. Sarada Mohan. The plea of the appellant was that the alleged payments, in favour of M/s Yellaiah Gupta, or receipts from it, are nothing, but book adjustments, that too, in the light of dissolution of a firm, by name, M/s Venkateshwara Rice Mill.

The payment to Smt. Sarada Mohan is said to be on account of the

death of her husband, who was a legal advisor to the appellant. Though at the stage of passing of orders under Section 143(3) of the Act these contentions were accepted, they were disbelieved, at a later stage.

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Receipt of Rs.20,000/- or more, in cash, or payment of the same to a depositor, in a sum, exceeding Rs.10,000/-, is not only prohibited, but also visits the assessee, with penal consequences. The assessee accused of violating it, would be exposed to the penalty of equal amounts. The other general penalties in the Act may also be in store. Therefore, it is only when the ingredients of the provisions of the Act are proved to be existing, that the penal action can be taken. Section 269-SS can be said to have been contravened, if only it is established as a fact, that certain amount, exceeding Rs.20,000/- was received as loan or deposit, in cash, from a depositor, otherwise than in the form of account payee cheque or Bank draft. The provision has already been extracted.

Except making reference to the relevant provisions of the Act, and the allegation contained in the show cause notices, the Assessing Officer did not indicate the method of payment. It was simply mentioned that everything was done in cash. The very fact that from the same agencies, amounts were said to have been received and repaid, as reflected in the books, discloses that it was nothing, but book adjustment. Further, he did not give any specific finding that the so-called receipts are in the form of loan or deposit or the repayment was made thereof. All the three orders passed by the Assessing Officer are silent about the payment made to Smt. Sarada Mohan. The Appellate Commissioner as well as the Tribunal proceeded on the same lines. They did not bestow any

attention as to whether one of the sister concerns can take deposit, or loan, from another, without reflecting the same in the books of account. The proceedings initiated under Sections 271-D and E were treated almost in the ordinary sense.

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Obviously, anticipating that instances of indiscriminate invocation of Sections 271 D and E and other analogous provisions may take place, the Parliament introduced Section 273-B. It reads.

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“Penalty not to be imposed in certain cases.

273 B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271B, section 271 BB, section 271C, section 271D, section 271E, section 271F, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or sub-section (1) of section 272BB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure”.

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From this, it becomes clear that if there exists reasonable cause for failure to comply with Sections 271-D and 271-E, or other related provisions, penalty need not be imposed. In other words, if an assessee *bonafidely* took a particular step, and that in turn, resulted in contravention of Section 269-SS or 269-T of the Act, penalty cannot be imposed, as a matter of course.

Making book adjustment of the funds, by a firm, *vis-à-vis* its sister concern, can, by no means, be said to be the one, taken in clear violation or contravention of the said provisions. It is only when an assessee has taken a decision to mobilize loans or deposits, and in

the process it has received amounts exceeding Rs.20,000/-, otherwise than through cash, that the contravention can be said to have been taken place.

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Similarly, Section 269-T can be said to have been violated, if only the repayment to a depositor or a loanee exceeding a sum of Rs.10,000/- was made, otherwise than through crossed cheque or demand draft. In the instant case, the Assessing Officer did not identify the loanee or depositor and has simply invoked the provisions, in relation to an internal financial adjustment among the firms.

Therefore, this Court is of the view that the acts and omissions attributed to the appellant do not constitute violation of Sections 269-SS and 269-T, and if for any reason, such contravention is noticed, it stands condoned under Section 273-B and thereby, the proceedings initiated under Sections 271-D and 271-E of the Act are declared as untenable.

The appeal is accordingly allowed. The miscellaneous petition filed in this appeal shall also stand disposed of.

There shall be no order as to costs.

J.

L.NARASIMHA REDDY,

CHALLA KODANDA

RAM,J.

Dt.12-11-2014

Note:

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