IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 85 of 2002

RK SINGHAL
V/S
CIT, JODHPUR & ANR

Mr. Arun Bhansali, for the appellant.

Mr. K.K.Bissa, for the respondent.

Date of Order : 25.1.2008

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI DEO NARAYAN THANVI,J.

ORDER

Heard learned counsel for the parties.

The assessee, by this appeal, seeks to challenge the order of the ITAT dated 26.04.2002. The appeal was admitted on 14.11.2002, by framing following substantial questions of law:

> "(1) Whether under the facts and in the circumstances of the case the Tribunal was justified in reversing the order of CIT(A) and holding that the penalty u/s. 271D amounting to Rs.1,65,000/- was correctly imposed by the Assessing Officer?
>
> (2) Whether under the facts and circumstance of the case the breach of the provisions of Section 269 SS of the Act was merely a technical or venial breach for which no penalty u/s. 271D should have been imposed?
>
> (3) Whether under the facts and circumstances of the case the phrase

'equal to' contained in Section 271D of the Act leaves no discretion in the hands of the authority imposing penalty or it cannot maximum penalty to be imposed with discretion to impose lesser penalty?"

The necessary basic facts are that the Assessing Officer vide his order Annexure-1 found that during the relevant year, the assessee had taken loan/deposits for a sum of Rs.1,65,000/- in cash and, thereby, committed violation of provisions of Section 269 SS and, therefore, he incurred liability of penalty under Section 271D. The learned Assessing Officer considered the explanation of the assessee about the reasonable cause, as contemplated by Section 273D, and found that the explanation is not believable. The explanation given was about the assessee's mother having become ill, who was required to be taken to Bombay and in receiving the amount by cheque, it would have involved some time, which he would not wait for.

In appeal, the learned Commissioner set aside the penalty only by observing that provisions of Section 269SS are applicable only in those cases where deposits are treated as genuine and if the same are not genuine then recourse to Section 68 of the I.T. Act would be taken, and in that event, the amount shall be added to the assessee's income as unexplained credit and that would not attract Section 271D. The learned Commissioner only found that the assessing officer has accepted the genuineness of the cash

deposits and has not made any addition on the ground, and that the cash deposits were not proved, and it is only a technical aspect if the assessee accepted the cash deposits in order to meet the treatment of serious illness of appellant's mother at Bombay, and that explanation cannot be rejected even if no evidence with regard to the illness of the mother is produced, and since no mens rea is involved. It was also found that it will be too harsh to levy penalty in such circumstance, and set aside the penalty.

The Revenue went in further appeal before the ITAT, and the learned Tribunal, disagreeing with the finding of the learned Commissioner held, that the breach involved is not mere a technical one but a clear and full-fledged one, though the mischief of the default, for which the penalty has been provided and accordingly levied u/s 271D, is in itself a technical one. Then, a distinction was drawn between technical breach and technical default, and it was found that if the requirements itself are technical, then, the contravention would be technical default and is of no avail to the assessee. Then, it was found that in the instant case, the situation is not of there having been compliance of the larger part of the requirement of law and the breach being of minor technical part/aspect only of the whole requirement, then the factual aspect of the matter was considered, and it was noticed in Para 5 that the

assessee needed money because he wanted to take his mother to Bombay for treatment as she was seriously ill but no details of her illness nor any supportive evidence regarding her illness and for her treatment at Bombay has been furnished, and in turn the related urgency remains as having not been established. It was also found that this is also the undisputed position that the assessee never took his mother to Bombay for treatment and the explanation is that she was not taken to Bombay under medical advice. Then, it was also found that the assessee took the loan of Rs.1 lac on 19.6.90 and as on that date there was an opening cash balance of Rs.1,50,000/- and closing cash balance of Rs.2,50,000/-. Likewise, at the time, when the assessee took the second deposit/loan in cash of Rs.65,000/- on 30.6.90, and as on that date, the opening cash balance was of Rs.2.61 lacs and the closing cash balance was of Rs.3.21 lacs, which clearly negatives the assessee's contention about the asseessee having been in urgent need of the amount of loan/deposit in cash.

In our view, apart from the fact that the question as to whether the assessee has been able to prove the reasonable cause within the meaning of Section 271D is a pure question of fact, in the present case, the facts found are glaring, which on the face of it is clearly negative the existence of any reasonable cause.

That being the position, question No.1 is required to be answered against the assessee and in favour of the Revenue, then regarding questions No.2 and 3, it cannot be said to be any more res integra, in view of the recent judgments of the Hon'ble Supreme Court, in the case of Asstt. Director of Inspection Investigation Vs. A.B.Shanthi, reported in (2002) 6 Supreme Court Cases 259 and, therefore, questions No.2 and 3 are also answered against the assessee and in favour of the Revenue.

We do not find any force in this appeal, and the same, is dismissed.

(DEO NARAYAN THANVI),J. (N P GUPTA),J.

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