
(2016) 08 RAJ CK 0131

In the Rajasthan High Court

Case No : Income Tax Appeal No. 27 and 28 of 2000

CIT

APPELLANT

Vs

M/s Chandra Cement Ltd

RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Income Tax Act, 1961 — Section 260A, Section 269SS, Section 271D

Citation : (2017) 291 CurTR 581 : (2017) 393 ITR 324 : (2017) 1 WLC 440

Hon'ble Judges : Mr. Ajay Rastogi and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. Anant Kasliwal, Advocate, for the Respondent; Mr. Anuroop Singhi and Mr. Sandeep Pathak, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

J.K. Ranka, J. - The instant two appeals under Section 260-A of the Income Tax Act, 1961 were admitted by this Court vide order dated 8.2.2012 on the following question of law. It relates to the assessment years 1992-93 and 1993-94 :-

"Whether Tribunal was justified in holding on the facts found that no case for imposition of any penalty under Section 271-D is not made out because provisions of Section 269-SS are not attracted in this case?" It appears that the word "not" of section 271-D has wrongly been mentioned.

2. Brief facts noticed for disposal of these two connected appeals where penalty under Section 271-D of the Act is an issue, are that the respondent assessee is a Limited Company and was setting up a Mini Cement Plant in Village Paniyala, Tehsil Kotputli, District Jaipur. It was noticed by the Assessing Officer during the course of scrutiny that balance-sheet of the respondent company indicated "unsecured loans" from the Chairman-cum-Managing Director, namely R.P. Goyal and on further verification of the accounts it transpired that the respondent had received cash through the said Managing Director on various occasions and

majority of the cash deposits was exceeding Rs.20,000/- and certain amounts were even to the extent of Rs.4,05,960/-, Rs. 2,50,000/-, Rs. 1,75,000/-, Rs. 2,70,000/-, Rs.3,00,000/- etc. The AO was of the, prima facie, view that the said cash deposits were in violation of provision of Section 269-SS of the Act as the assessee was precluded from accepting any amount over and above Rs.20,000/-.

3. Accordingly, a show-cause notice was issued, the assessee respondent, however, submitted reply, inter alia, contending that there was no banking facility in the radius of 25 km. of the site of Village Paniyala, where the Cement Plant was being set up, of which the project cost was of Rs.1.60 crore and that there was a delay in getting sanction from the financial institutions of the term loan and, therefore, the Promoter-Director decided to give funds from his own resources. Further, no money had been accepted by the assessee company in cash and the money had been directly disbursed for the sake of payments towards constructional activities or/and setting up of the Plant and that it was neither a loan nor a deposit. However, the AO did not agree to the contentions raised by the assessee and while imposing penalty, the AO observed that the company as well as Managing Director (R.P. Goyal) who had deposited by cash, were having account in the same bank and when R.P. Goyal can withdraw money from his own account by cash, there was no reason not to transfer the money from his account to that of the company by cheque.

4. The AO went into the issue threadbare and noticed the claim of the assessee that the said amount was immediately incurred towards payment of construction/ setting up of the Plant, was not correct as on examining the books of account, such contention was found "not proved" as even after deposit by R.P. Goyal by cash in the account of assessee, gradually the expenditure was incurred and not immediately.

5. The AO also noticed that though the claim of R.P. Goyal was that he had advanced the money from his proprietorship concern, namely M/s. Chintpurni Enterprises, but when the AO desired to produce the books of account of the said concern for verification as to how the funds flowed in the books of R.P. Goyal, but despite several opportunities, the books of account of M/s. Chintpurni Enterprises were not produced and even the AO seriously doubted as to whether R.P. Goyal did really have sufficient cash balance to the tune of almost Rs.2.80 crore in both the years to prove the transfer of money to the assessee and accordingly being not satisfied, imposed penalty under Section 271-D of the Act at Rs.79,78,368/- in the assessment year 1992- 93 and Rs.1,98,55,171/- in the assessment year 1993-94.

6. The matter travelled in appeal before the Commissioner of Income Tax (Appeals), before whom the facts were reiterated and also pleaded that there was a bona fide belief and reasonable cause in depositing the said amounts as the deposits by the Managing Director of a Limited Company does not partake character of a "loan or deposit". However, the CIT(A) was not inclined to agree to the submissions of the respondent and also doubted the veracity of the fact

about the non production of the books of account of M/s. Chintpurni Enterprises. The CIT(A) also wanted to go through the books of account of M/s. Chintpurni Enterprises, however, before him the claim was made that the books of account are lying in the Sales Tax Department but neither the seizure memo of the books of account having been seized nor any evidence about the seizure of the books of account was produced. In the assessment year 1993-94, before the CIT(A) one handwritten cash book, between 1.4.1992 and December 1992, was produced and the CIT(A) noticed that the said so-called cash book is in a good condition, which appeared to the CIT(A) that it was made afresh. The CIT(A) also noticed that there were contradictory explanation of R.P. Goyal vis-a-vis the assessee and doubted the very deposits and upheld the penalty imposed.

7. Further, appeal was preferred by the assessee before the learned Income Tax Appellate Tribunal. The Tribunal, however, was satisfied with the explanation offered by the assessee and held that there was a reasonable cause and bona fide belief in the entire transaction of deposit of the so-called money from R.P. Goyal to the Company. The Tribunal also noticed that the amount advanced by R.P. Goyal to the assessee Company was merely for the purposes of incurring of expenses on construction/setting up of Plant. The Tribunal noticed that R.P. Goyal, the Chairman-cum- Managing Director was the Promoter-Director of the Company and was looking after the entire set up of the Plant, since the assessee applied for term loan to the financial institution and the funds were delayed, therefore, there was no harm in the amount having been deposited by R.P. Goyal. The Tribunal also held that it was a unilateral act of R.P. Goyal to involve and utilise his own money by withdrawing from his own sources and a unilateral act cannot result in a contract for which existence of two parties is a sine qua non, and in a case of loan or deposit, there has to be a bilateral act, the Tribunal found that it is neither a loan nor deposit, bona fide belief and a reasonable cause stood proved by the assessee and thus, deleted the penalties.

8. Learned counsel for the appellant-Revenue vehemently contended that it clearly manifest a loan or deposit of money by R.P. Goyal in the books of account of the assessee company and the finding recorded by the AO was confirmed by CIT(A) but the Tribunal in a cursory manner observed to the contrary without taking note of the material on record.

8.1 He further contended that the assessee being a Limited Company and its Managing Director R.P. Goyal, are two distinct and separate entities and Section 269-SS prescribes "loan or deposit" by any person, and "any person" would cover everyone. He further contended that admittedly both, assessee as well as R.P. Goyal had bank accounts in the same bank and there was no reason as to why banking mode was not taken note of and in Section 271-D, word used being "shall", it becomes mandatory to be complied with and relied on the judgments rendered in Grihalakshmi Vision v. The Additional Commissioner of Income Tax ITA Nos.83 and 86 of 2014 decided on 7.8.2015, A.M. Shamsudeen v. Union of India and Others (2000) 244 ITR 266, Bultec Engineers and Builders v. Deputy

Commissioner of Income Tax (2013) 256 CTR 205; The Commissioner of Income Tax v. M/s Samora Hotels P. Ltd. ITA No.313/2006 decided on 23.2.2012, Assistant Director of Inspection Investigation v. Kum. A.B. Shanthi (2002) 6 SCC 259; P. Bhasker v. Commissioner of Income Tax (2012) 340 ITR 560 (Mad.); Commissioner of Income Tax v. Navjeevan Roller And Pules Mills (2001) 251 ITR 661, and Mehta Vegetables P. Ltd. v. Union of India and Others (1998) 234 ITR 425 (Raj.), and contended that in identical circumstances the Courts have expressed that deposit by Director of a Limited Company, is in the nature of loan or deposit.

8.2 Learned counsel also contended that even R.P. Goyal was unable to prove as to how he had such huge cash of more than 2.80 crore, which he had brought into the books of assessee and despite several opportunities, the books having not been produced, adverse inference was drawn that R.P. Goyal was hiding something from the Department. For the assessment year 1993-94, Id. counsel contended that a cash book was produced and the CIT(A) after appreciation clearly observed that it appears that the cash book produced was a later creation. He also contended that both in facts and in law the Tribunal erred in deleting the penalties under Section 271-D.

9. Per contra, learned counsel for the assessee contended that R.P. Goyal, earlier was engaged in a small Kirana Shop and had a self styled business, gradually shifted to business of cement manufacturing and was in the process to establish a Mini Cement Plant and it was submitted before the Authorities that since there was delay in approval of the loan by financial institutions, to avoid increase in cost and the Plant is not delayed, R.P. Goyal provided funds to the assessee only towards constructional activities as well as setting up of the Plant. He stressed the point that whenever the amount was received by the assessee from R.P. Goyal, either the same was spent immediately through the person who was rendering services or within a gap of few days but ultimately the money which was infused in by R.P. Goyal, was towards incurring of the activities of the company only.

9.1 Learned counsel further contended that in bona fide belief the money in piecemeal was deposited by R.P. Goyal being Chairman-cum-Managing Director in the books of company but that does not violate Section 269- SS and the Tribunal rightly came to the said conclusion. He further contended that reasonable cause has been accepted by the Tribunal after having gone into the facts in detail and in support thereof, relied on Hindustan Steel Ltd. v. State of Orissa 1970 AIR 253, Assistant Director Of Inspection Investigation v. Kum. A.B. Shanthi (supra), Narsingh Ram Ashok Kumar v. Union of India (Uoi) And Others (1998) 234 ITR 414 Patna; Commissioner of Income Tax v. Manoj Lalwani 2002 (3) WLC 249; Commissioner of Income-Tax v. Balaji Traders (2008) 303 ITR 312; Commissioner of Income Tax v. Maheshwari Nirman Udyog (2007) 211 CTR Raj 579; Commissioner of Income-Tax v. T. Perumal (Indl.) (2015) 370 ITR 313 (Mad); and Krishnapada Chanda v. Commissioner of Income Tax XI I.T.A. No.383

of 2005 decided on 31.3.2015 by High Court of Calcutta.

9.2 Learned counsel for the respondent also relied upon Notes and Clauses which came to be introduced with effect from 1.4.1984 by the Finance Act, 1984, and also Circular of the Central Board of Direct Taxes bearing no.387 dated 6.7.1984 and contended that primarily the provision was brought into force taking into consideration that in survey and search proceedings a claim is always made that whenever some amount was found, that it was received from certain persons by cash and to plug that loophole this provision was made, but in the instant case it is neither a case of survey nor search and, therefore, the provisions are not attracted and rightly held by Tribunal.

10. We have heard the arguments advanced by the learned counsel for the parties and perused the material on record.

11. It would be appropriate to quote Sections 269- SS, Section 271-D and 273-B of the Act, which are the bone of contention in between the rival parties :-

"269SS. Mode of taking or accepting certain loans and deposits. - 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), is (twenty) thousand rupees or more : Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,- xxxx xxxx xxxx xxxx

Explanation. - For the purposes of this section,-

(i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;)

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949); (iii) "loan or deposit" means loan or deposit of money.)"

271D. Penalty for failure to comply with the provisions of section 269SS. - (1) If a person takes or accepts any loan or deposit 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 Joint Commissioner.

273B .Penalty not to be imposed in certain cases - Notwithstanding anything contained in the provisions of (clause (b) of sub-section (1) of) (section 271, section 271A, section 271B, (section 271BB,) section 271C, section 271D, section 271E, clause (c) or clause (d) of subsection (1) or sub-section (2) of section 272A, sub-section (1) of section 271AA) or (sub-section (1) of section 272BB or) clause (b) of subsection (1) or clause (b) or clause (c) of subsection (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.)"

12. That Section 269-SS prohibits "a person from taking or accepting from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if, inter alia, the amount of such loan or deposit or the aggregate amount of such loan and deposit is Rs. twenty thousand or more", and failure to comply entail penalty to a sum equal to the amount of the loan or deposit. At the same time, Section 273-B does leave discretion, if the person or the assessee, as the case may be, proves that there was reasonable cause for the said failure.

13. Indisputably, the amount as noticed by the AO was found credited in the books of account of the assessee company as having been received from time to time from R.P. Goyal who is said to be Chairman-cum- Managing Director of the assessee company.

14. The main thrust of argument of the learned counsel for the Revenue and which appeals to us has been that admittedly when the amount has been found credited in the books of account of the assessee, that too by cash on various dates with no satisfactory explanation tendered, leaves no manner of doubt that the amounts which were received by the assessee from R.P. Goyal and shown as "unsecured loan from R.P. Goyal" are in the nature of deposit of money and once loan or deposit has been received by way of cash, it invokes Section 269-SS and it has been rightly invoked by the AO in the instant case. Though the Tribunal has found that the company has a separate status and entity and when the Tribunal itself finds that there are two separate entities, the subsequent observation of the Tribunal ad-infra :-

"there were neither compelling reason nor a compelling force by the so called artificial person-company to bring in the money, it appears that it was merely a suo moto decision of Mr. Goyal to expose himself to such a huge risk of utilizing his personal money for company"s purposes, with the hope that he would take it back when the loans are disbursed to the company. In other words, it is a case where agent utilized his own money in order to fulfil his obligations towards the principal upon which he became entitled to get back the money. This is thus a

unilateral transaction on the part of Mr. Goyal to involve and utilize his own money by withdrawing it from his own sources. An unilateral act cannot result in a contract for which existence of two parties is a sine qua non. Whether loan or deposit they both are contracts only, originated from bilateral act.."

15. We are unable to subscribe the view expressed as there is a direct nexus of the money having flown from R.P. Goyal in the books of account of the assessee, may be towards payment of constructional activities of the assessee but it does not alter the character of deposit. The company after having received such amount was duty bound to repay back to the creditor which in the instant case may be a Director or otherwise and it is not the case of the assessee that the amount which was received from R.P. Goyal would remain with the company and was not repayable. The assessee company was duty bound to repay the said loan when demanded by R.P. Goyal or when company had sufficient liquidity. The Tribunal has also come to a finding that there is no agreement in between the two i.e. company as well as R.P. Goyal, and since there is no agreement, it is neither loan nor deposit, the said finding of the Tribunal in our view is wholly perverse. The conduct or the entry and flowing of funds is sufficient to prove that the amount was admittedly received by cash in the account of assessee as having been received from R.P. Goyal and found credited as an "unsecured loan", proves that it was in the nature of a loan and certainly such loan having been received by cash, falls within the ambit of Section 269-SS.

16. We are not impressed by the argument raised by the learned counsel for the assessee that R.P. Goyal being a semi literate and educated upto only 9th class, and earlier engaged in Kirana; entered in the field of Cement Trading and Distributorship, promoted this company and became Chairman-cum-Managing Director of the company, was not aware of the provisions of law, in our view such an argument is worth rejection primarily since the instant appeals arose in a case of Limited Company and not R.P. Goyal. Provisions were brought into force from 1.4.1984 and such provisions were in force for almost 8 years and we cannot loose sight of the fact that over the years R.P. Goyal being in the business for years together, was not aware of the provisions of law although the presumption to know the law is to the contrary. Equally important is the fact that a Limited Company right from being formed is assisted by Chartered Accountant and Company Secretary, who are well qualified professionals and the justification tendered that R.P. Goyal being less literate, deserves no indulgence and it goes without saying that ignorance of law is no excuse.

17. This finding of fact that the assessee as well as R.P. Goyal had common bank account in the same bank, remained unrebutted by the assessee as well, and if there is any direct nexus proved by the assessee that the amount as received from the Director was utilised towards payment to various labourers/contractors spent for constructional activities that does not improve the case of the assessee at all in these proceedings.

18. We have gone through the Notes and Clauses also which have been

introduced from 1.4.1984 and the Circular of the Board, though states that the provision was brought into force taking into consideration that in survey and search proceedings whenever unaccounted cash is found in the premises of the person surveyed or searched, the claim is invariably made that the alleged amount is received from A, or B, or C, etc. and to plug such loopholes this provision was brought but that might be introduced initially taking into consideration claims made in survey and search proceedings but over the years it equally applies to a case in hand as well and may not be restricted to only survey and search proceedings, as prayed.

19. Both the learned counsel have relied upon the judgment rendered by the Apex Court in the case of Assistant Director of Inspection Investigation v. Kum. A.B. Shanthi (supra) where the Apex Court has upheld the constitutional validity and has held that it is within the parameters of law and is not violative of Article 14 of the Constitution and it was enacted with legislative competence. The judgment further lays down that if there is a genuine and bona fide transaction and the loan or deposit has been received for some bona fide reason, the Authority vested with the power to impose penalty has got discretionary power not to impose the same. However, for the reasons assigned earlier, in our view no reasonable cause in the instant case is made out.

20. The judgment relied upon by the learned counsel for Revenue of Delhi High Court in the case of The Commissioner of Income Tax v. M/s Samora Hotels P. Ltd. (supra) is identical to the issue at hand of penalty under Section 271-D in a case of Limited Company who had also received deposit of money by cash from Rajendra Diwan, Puneet Diwan and Mrs. Urmil Diwan, Promoter Directors by way of unsecured loan and an amount of Rs.23.25 lac had been received in cash/bearer cheques in excess of the limit of Rs.20,000/-. It was claim of the assessee that a Hotel was being set up by the assessee (Limited Company) at Shimla and for the purposes of construction of the said Hotel funds were contributed by its Directors/shareholders in the form of loan as and when required. It was the claim of the assessee that the amount was towards share capital money, and there also reasonable cause was pleaded but penalty was imposed by the AO. The CIT(A) also confirmed the penalty imposed by the AO, however, the Tribunal accepted the contention of the assessee and deleted the penalty. The Delhi High Court, after having gone into the facts in detail and considering the judgment of the Apex Court in the case of Kum. A.B. Shanthi (supra), reversed the finding of the Tribunal and upheld the penalty imposed by holding that loan or deposit by the assessee from the three Directors, is covered by the provisions of Section 269-SS.

21. The judgment in the case of Bultec Engineers and Builders v. Deputy Commissioner of Income Tax (supra) is also a case where the assessee was engaged in the business of construction and the finding recorded by the Revenue was that one M.T. Nair agreed to provide financial support which was to the tune of Rs.6,51,000/- and the said amount was paid in cash on various dates

commencing from April 1993 and the AO having noticed that there was contravention of Section 269-SS, imposed penalty under Section 271-D at Rs.7,35,475/- after noticing other credits also, and the High Court after analysing the provisions came to the conclusion that neither reasonable cause was found nor the explanation was bona fide and upheld the penalty imposed by the AO.

22. Taking into consideration the above, the amount received by the assessee from R.P. Goyal was certainly in the nature of loan and we do not approve the manner in which the Tribunal has recorded a finding that it is neither loan nor deposit and it is perverse and contrary to the material on record. Admittedly in the audited accounts as well as the annual report of the assessee duly approved by its general body, indicate the money deposited by R.P. Goyal as "unsecured loan".

23. The argument of the learned counsel for the assessee that the amount in any case had to be paid to petty labourers and contractors in a remote place where the company has been established is beyond the purview of the question being raised by the Revenue. Question in the instant case is the manner in which the amount has been received by the assessee from R.P. Goyal, and not about nexus of the expenditure or the mode of payment to the ultimate labourers/contractors. The same mode could have been adopted by the assessee by taking the amount from R.P. Goyal by account payee cheques and withdrawn the same after having received from R.P. Goyal by cheques and for the purposes for which the claim is made by the assessee.

24. We are also in agreement with the learned counsel for the Revenue that the deposit by R.P. Goyal by cash to the extent of almost Rs.2.80 crore which is quite substantial, raises doubt as to availability of such substantial cash in his books of account and as to where such cash of almost Rs.2.80 crore was lying. Admittedly, it is claimed that R.P. Goyal deposited the said amount in the two assessment years through its proprietorship concern M/s. Chintpurni Enterprises and both AO as well as the CIT(A) have raised serious doubt about the source of the said amount and the assessee was required to prove in rebuttal and disclose the source of money having been received from R.P. Goyal and repeatedly they requested the assessee to produce the books of account of R.P. Goyal (M/s. Chintpurni Enterprises) but is a finding of fact recorded by AO and confirmed by the CIT(A) that such books were not produced. The operative part of the order of AO is quoted ad infra :-

"From the above discussions, it is clear that the assessee company had a bank account in the same bank in which the depositor of money had his bank account. The statement of Shri R.P. Goyal was recorded u/s 131 and he could not give a reasonable cause that why the money was not transferred to the assessee company by way of account payee's cheque. It may be further highlighted that the sources of advances by Shri R.P. Goyal to the assessee company were also examined. Shri R.P. Goyal stated to have advanced the amounts from his

proprietorship concern M/s. Chintpurni Enterprises. Shri R.P. Goyal was specifically asked to produce the books of account of the said concern, but these were not produced. The A/R of the assessee company was again given opportunity on 5.8.1994 that the books of accounts of M/s. Chintpurni Enterprises should be produced, but such books were never produced. In the light of this conduct of Shri R.P. Goyal, it is very difficult to say the cash transactions by him with the assessee company were genuine. The earlier A.O. while completing the assessment has already intimated to the Assessing Officer of Shri R.P. Goyal to examine the loan at his level."

25. The CIT(A) also noticed as a vital factor that neither the assessee nor R.P. Goyal were interested in producing the books of account of M/s. Chintpurni Enterprises and thus raised a serious doubt as to whether R.P. Goyal was in a position to have substantial cash in hand to the tune of almost Rs.2.80 crore in his books of account. In our view the amount is not petty and one was certainly required to prove the source of the money as having been advanced by R.P. Goyal. Though, before the Tribunal Revenue specifically raised issue about non-production of books of M/s. Chintpurni Enterprises in one year and in subsequent year it was claimed to be fabricated or forged and even doubted the genuineness of such huge deposit of cash and though Tribunal has specifically observed the above argument but surprisingly has not at all commented or give any finding on this vital issue.

26. The judgment of the Apex Court in the case of Hindustan Steel Ltd. v. State of Orissa (supra) relied upon by the learned counsel for the assessee does not help the assessee in any manner as the Apex Court has held that when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute, in such cases penalty may not be imposed, but in our view it is neither a technical nor venial breach of the provisions of the Act and the assessee has not been able to prove the reasonable cause or bona fides in accepting the cash particularly when there is admittedly a finding of fact that the assessee as well as R.P. Goyal had the bank account in the same bank.

27. The judgment in the case of Commissioner of Income-Tax v. T. Perumal (Indl.) (supra) of Madras High Court is on the proposition about reasonable cause having been accepted in that case and the Court found as a finding of fact that the genuineness of the transaction was found by the Tribunal and the High Court did not find any substantial question of law arising out of the finding of fact.

28. The facts of the judgment of the Calcutta High Court in Krishnapada Chanda v. Commissioner of Income Tax (supra) are distinguishable, where the money came out of the bank account of the lender and was deposited in the bank account of the borrower and the High Court found that there was a great urgency in depositing the said amount and it took into consideration that amount was required to be paid and to make immediate payment otherwise, the assessee, in that case was apprehensive of getting his booking cancelled and also of non

availability of Truck due to heavy demand in the market, therefore, this found favour with the Court, however, the facts of that case are distinguishable as in the said case, cash came out of the Bank account of the lender, which in the instant case is even doubtful on account of non-production of books and other factors taken into consideration and in the instant case even no urgency has been pleaded or shown about immediate necessity of funds as otherwise something adverse would have happened.

29. The other judgments relied by the learned counsel for the assessee are also inapplicable and distinguishable.

30. In view of what we have observed herein above, in our view, the order of Tribunal is not sustainable for the reasons assigned and the penalty, on the facts and circumstances, was rightly imposed by the AO and confirmed by the CIT(A).

31. Consequently, the question of law is answered in favour of the Revenue and against the assessee, with no order as to costs.