(2013) 02 GUJ CK 0037

In the Gujarat High Court

Case No : Tax Appeal No''s. 673 and 677 of 2012

CIT APPELLANT

Vs

Shyam Corporation RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0037

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Paurami B. Sheth, for the Appellant;

Final Decision : Dismissed

Judgement

1. Revenue has preferred this appeal against the order of the Income Tax Appellate Tribunal (''the Tribunal'' for short) dated 13.4.2012. We may notice facts as arising in Tax Appeal No. 673/2012. Issue pertains to penalty u/s 271D and 271E imposed by the Assessing Officer against the respondent assessee for alleged breach of provisions of section 269SS and section 269T respectively. In the present appeal following question has been framed:

Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT(A) deleting the penalty of Rs. 67,62,971 levied u/s. 271D of the IT Act?

Assessing Officer framed the penalty after hearing the respondent assessee. It was held that the assessee had breached the requirements of section 269SS of the Act. Various entries reflected advances from various parties which were in excess of Rs. 20,000 and received in cash. Assessee approached the appellate authority. Commissioner (Appeals) held as under:

After going through rival submissions I see that there was no cause for 271D penalty with respect to No. I books of accounts because these have been accepted as trade receipts by the appellant as per submission of the assessee reproduced in para 10 of the penalty order. With respect to deposits shown in No. II books, in Special Audit Report these deposits have been treated as Deemed Sales and credited to P & L Account and the Net Profit so determined as per Special Audit Report for No. II books has been confirmed vide this office appellate order passed in the case of the appellant firm on 11th September 2009. As the deposits have been treated as Income for taxation purposes there is no case of 271D even with respect to the alleged deposits shown in No. II books of accounts. The Assessing Officer is directed to delete the penalty imposed u/s. 271D.

2. Such issue was carried in appeal by the Revenue before the Income Tax Appellate Tribunal. The Tribunal agreed with the view of CIT (Appeals) making following observations:

We have considered the submissions of the Ld. D.R. And written submissions filed by the assessee and have also perused the order of the Assessing Officer and CIT(A). It is an undisputed fact that the assessee is in the business of construction of houses. It has received advance money. The booking advance as per No. 2 books have already been treated as ''Deemed Sales'' and considered as Income. The booking money received by assessee has been treated as receipts forming part of sales. This fact is also not disputed by Assessing Officer. We agree with the contention of the assessee, that once the booking advance has been assessed as undisclosed income by invoking provisions section 68, the same cannot be considered as deposit/loan in violation of section 269SS/269T. We are therefore, of the view that once the amount has been considered as income, the same cannot be considered as deposit for levy of penalty u/s. 271D & 271E. In view of the aforesaid facts, we find no infirmity in the order of CIT(A) for deleting the penalty u/s. 271D & 271E. We accordingly direct the deletion of penalty.

3. Having heard learned counsel for the Revenue, we have no reason to interfere. It appears that the receipt for which revenue intends to invoke the provisions of section 269SS or 269T as the case may be for imposing penalty u/s 271D or 271E as the case may be were during the assessment proceedings treated as the booking advance and consequently assessed as undisclosed income of the assessee invoking section 68 of the Act. Such amounts were treated as booking advance and therefore, taxed as undisclosed income. We agree with the view of CIT (Appeals) as well as Tribunal that same would thereafter not bear the in that view of the matter, no question of law arises. Tax Appeals are dismissed.

