(2011) 08 BOM CK 0032

In the Bombay High Court

Case No : ITA No''s. 3349, 3350, 3379, 3383, 3384, 5129 and 5130 of 2010

Commissioner of Income Tax — APPELLANT

Vs

Motta Construction P. Ltd. — RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:
Income Tax Act, 1961 — Section 153C, 269SS, 271D

Citation : (2011) 338 ITR 66 : (2012) 20 TAXMAN 574

Hon'ble Judges : J.P. Devadhar, J;A.A. Sayed, J

Bench : Division Bench

Advocate : B.M. Chatterjee, for the Appellant; P.J. Pardiwala and Atul K. Jasani, for the Respondent

Final Decision : Dismissed

Judgement

1. In all these appeals, the only question raised by the Revenue is, whether the income tax Appellate Tribunal was justified in deleting the penalty levied u/s 271D of the income tax Act, 1961? In the present case, the premises of Mr. Kiran Shah, a director of the assessee-company was searched by the income tax authorities. During the course of search, incriminating documents regarding unaccounted expenditure incurred by the said Kiran Shah were seized. In the proceedings initiated u/s 153C of the income tax Act, 1961, the said Mr. Kiran Shah offered to tax the undisclosed expenditure incurred by him for and on behalf of the assessee-company for construction activities.

2. Accordingly, journal entries were passed in the assessee''s books of account in respect of the said expenditure incurred by the director on behalf of the company. Since the credit entries in the books of the assessee were not by way of account payee cheque/bank draft, the Assessing Officer was of the opinion that the assessee violated section 269SS and accordingly levied penalty u/s 271D of the Act. The Commissioner of income tax (Appeals) has upheld the penalty.

3. Aggrieved by the aforesaid order, the assessee filed appeals before the income tax Appellate Tribunal and the income tax Appellate Tribunal deleted the penalty by recording a finding of fact in para. 13 of its order to the effect that the assessee has neither received any amount by way of loan nor received any deposit and it is the director of the company who had utilized his undisclosed income for and on behalf of the assessee. The income tax Appellate Tribunal has recorded a finding of fact that the director had explained the source of his undisclosed income and the said explanation has been accepted by the Department. Thus, in the present case, there was no question of receiving any amount by the assessee as a loan or deposit from the director of the assessee. In these circumstances, deletion of penalty imposed u/s 271D of the income tax Act, 1961, cannot be faulted. Accordingly, all the appeals are dismissed with no order as to costs.