

(2007) 04 RAJ CK 0029
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Raj Kumar Sharma

RESPONDENT

Date of Decision : 30-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 269SS, 271D, 273B

Citation : (2007) 294 ITR 131

Hon'ble Judges : Raghvendra S. Chauhan, J; R.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We heard Ms. Parinitoo Jain for the Revenue and Mr. P.K. Kasliwal counsel for the assessee.

That the assessee acted in contravention of the provisions of Section 269SS of the Income Tax Act, 1961, by accepting a loan of Rs. 90,000 in cash in the year from April 1, 2000, to March 31, 2001, on different dates from his brother Pankaj Sharma is not in dispute.

2. The details of the loan accepted by the assessee from his brother Pankaj Sharma are thus:

3. Since in the opinion of the Assessing Officer, the assessee acted in contravention of Section 269SS, notice was issued to the assessee to show, cause as to why penalty u/s 271D of the Income Tax Act may not be imposed on him.

4. The explanation of the assessee in response to the show-cause notice was that the loan was taken from his brother for immediate business need and that he was under bona fide belief that the acceptance of cash deposit below Rs. 20,000 does not contravene Section 269SS of the Income Tax Act.

5. The Assessing Officer imposed the penalty of Rs. 90,000 u/s 271D of the Income Tax Act.

In appeal preferred by the assessee, the Commissioner of Income Tax (Appeals) maintained the order of the Assessing Office.

On further appeal, the Income Tax Appellate Tribunal by its order dated October 6, 2005, set aside the penalty levied u/s 271D. It is this order which is impugned in the present appeal by the Revenue.

6. Counsel for the Revenue submits that the ignorance of law is no excuse, more so, the assessee being regular assessee was well aware of the legal provisions. According to her, the explanation furnished by the assessee does not make out any reasonable cause within the meaning of Section 273B of the Income Tax Act and that the impugned order gives rise to the substantial question of law.

We are not persuaded by the submission of counsel for the Revenue.

7. Section 271D of the Income Tax Act provides for penalty for failure to comply with the provisions of Section 269SS of the Income Tax Act. According to this provision, if a person, inter alia, accepts any loan in contravention of the provisions of Section 269SS of the Income Tax Act, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit so taken or accepted. Section 273B is an overriding provision. According to the said provision, no penalty shall be imposable on a person or assessee for any failure, inter alia, referred to Section 271D if he proves that there was reasonable cause for the said failure.

8. The Tribunal in its order has found that the genuineness of the deposits made by the assessee's brother Pankaj Sharma was not in doubt by the Assessing Officer. The Tribunal noticed the explanation given by the assessee that the deposits were obtained by him to satisfy the immediate business requirement but found that this has not been established. However, the Tribunal was thus of the view that there was a reasonable cause to accept the deposit otherwise through bank draft or through cheque because the assessee bona fide believed that the cash transactions below Rs. 20,000 was permissible.

9. It is true that the ignorance of law is no excuse, but the question here is whether the assessee was able to establish reasonable cause u/s 273B justifying that no penalty should be imposed in contravention of Section 271D of the Income Tax Act. None of the transactions exceeds, as noticed above, Rs. 20,000. The Tribunal accepted that the assessee bona fide believed that the cash transactions below Rs. 20,000 was permissible and the cause shown by the assessee constituted reasonable cause. The finding of the Tribunal cannot be said to be grossly perverse or unsustainable in law. In our considered view, the appeal does not give rise to any substantial question of law. It is dismissed in limine