(2007) 07 MAD CK 0146

In the Madras High Court

Case No : Tax Case (Appeal) No. 274 of 2004

Commissioner of Income Tax — APPELLANT

Vs

Rugmini Ram Ragav Spinners P. Ltd. — RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 143(3), 260A, 269SS, 269T

Citation : (2008) 220 CTR 520 : (2008) 304 ITR 417

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : N. Muralikumaran, for the Appellant; N. Muthukumar, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—This appeal is filed u/s 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income

Tax Appellate Tribunal, Bench "A", Madras in I.T.A. No. 1195(Mds)/94 dated 18.06.2003. On 22.06.2004, this Court admitted the appeal and

formulated the following substantial questions of law:-

1. Whether in the facts and under the circumstances of the case, the Appellate Tribunal was right in holding that cash payments made by the

assessee pertains to refund of share application money and not repayment of deposit or loan?

2. Whether in the facts and under the circumstances of the case, the Appellate Tribunal was right in holding that penalty u/s 271E is not leviable?

2. The facts leading to the above substantial questions of law are as under:

The assessee is closely-held)(in which the public are not substantially interested. The relevant assessment year is 1990-91 and the corresponding accounting year ended on 31.03.1990. The assessee filed its Return of income on 31.12.1990 admitting a total income of Rs. 5,59,760/-. Later,

notice u/s 143(2) of the Income Tax Act (""Act"" in short) was issued and subsequently the assessment was completed u/s 143(3) of the Act

determining the total income at Rs. 24,23,910/-. During the year of account, the assessee had repaid some of the share application money which it

had received earlier in cash contravening the provisions u/s 271E of the Act. Hence, the Assessing Officer initiated penalty proceedings u/s 271E

and levied a penalty of Rs. 5,90,416/-. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals)

(""CIT(A)"" in short). The CIT(A) allowed the appeal and deleted the penalty levied u/s 271E of the Act. Aggrieved, the Revenue filed an appeal to

the Income Tax Appellate Tribunal (""Tribunal"" in short). The Tribunal dismissed the Revenue''s appeal and confirmed the order of the CIT(A).

Hence the present tax case by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the provisions are mandatory and hence there is no mens rea or

evasion of tax needs to be proved before penalty is imposed. Further, it is submitted that the Tribunal has failed to note that the assessee did not

have ""reasonable cause"" for repaying the share application money in cash and hence, levy of penalty u/s 271E is automatic in cases of not

complying with the provisions of Section 269T. Further it is contended that the assessee had availed the loan and had repaid the same in cash

under the guise of refund of share application money. Hence the levying of penalty by the Assessing Officer is justified.

4. Learned Counsel appearing for the assessee submitted that that there is no repayment of loan involved in the present case and that the assessee

has only returned the share application money. Hence there is no violation of provision of Section 269T of the Act by the assessee and therefore,

the assessee is not subject to levy of penalty u/s 271E of the Act.

5. Heard the counsel. The assessee had received cash over a period of time, as advance towards allotment of shares from 16 persons without

stipulating any time frame towards return / refund of money without interest, in case of non-allotment of shares either fully or partly. In this case, the

money retained by the)(was neither deposit nor loan, but it is only share capital advance. Penalty u/s 271E is not automatic and to be levied only

in the absence of a reasonable cause. No doubt a reasonable cause has to be established by the assessee. The rationale behind the provisions of

Section 269SS and 269T is to prevent tax evasion, i.e., the laundering of concealed income by parties in the guise of cash loans or deposits in or

outside the accounts. The provision of Section 269SS and 269T therefore have application only in a limited way in respect of deposits or loans.

When it is neither deposit nor loan, the provisions of Sections 269SS and 269T have no application at all. Even if there is repayment by cash it

could not be said to attract the levy of penalty automatically, u/s 271E of the Act. The advances of share application money or repayments of such

advances have not flowed from any undisclosed income of the assessee or the concerned persons. It is also seen from the records that assessee

had not paid any interest at all on any of the advances repaid after quite some time. If the intention was to receive them as loans or deposits, then

certainly the lenders would not have made the advances gratuitously. It is also a factual finding given by the authorities below that the assessee was

not called upon to explain the default u/s 269SS on receipt of the advances in earlier years, which would show that the assessee''s case was not

governed by the said provisions. Penalty u/s 271E is not automatic, and a bona fide belief to the effect that the receipt of advances against

allotment of shares would not be termed as loans or deposits, would be sufficient to drop the penalty leviable, unless and until the material on

record positively shows that money received is only a deposit or loan. There is no dispute that the impugned advances were only against allotment

of shares and not by way of loans or deposits. The authorities below have given a factual finding to the effect that it is not a deposit or loan. The

Tribunal, in Paragraph-3 of its order, held as under:

The Departmental Representative could not bring on record any material that would go to show that the assessee in fact wanted only loan or

deposit but tried to show them as share application money. Merely for the reason that some of the applications were rejected and in some of the

applications the share allotments were not in full, it cannot be taken to mean that it was not share application money. Upholding the order of the

CIT(A) the appeal by the Revenue is dismissed.

Hence the factual finding by the authorities below is that the amount received is not a deposit or loan, but it is only share application money, and the

same is based on valid materials and evidence. The relevant provisions of law are Sections 269T, 271D, 271E and 273B of the Act. In the present

case, the Assessing Officer levied penalty u/s 271E deals with ''penalty for failure to comply with the provisions of Section 269T''. Section 271E,

as on the relevant period, reads as follows:

271E. (1) If a person repays any deposit referred to in Section 269T otherwise than in accordance with the provisions of that section, he shall be

liable to pay, by way of penalty, a sum equal to the amount of the deposit so repaid.

(2) Any penalty imposable under Sub-section (1) shall be imposed by the Deputy Commissioner.

From a reading of the above, it is clear that if a person repays any deposit referred to in Section 269T otherwise than in accordance with the

provisions of that Section, he shall be subjected to levy of penalty. Section 269T deals with ''mode of repayment of certain deposits''. Section

269T, as on the relevant period, reads as follows:

269T.(1) No)((including a banking)(), co-operative society or firm shall repay to any person any deposit otherwise than by an account payee

cheque or account payee bank draft where the amount of the deposit, or where the amount of the deposit is to be repaid together with any interest,

the aggregate of the amount of the deposit and such interest, is ten thousand rupees or more:

Provided that where the repayment is by a banking)(or co-operative bank, such repayment may also be made by crediting the amount of such

deposit to the account (if any) with such company or bank of the person to whom such deposit has to be repaid:

Provided further that nothing in this Sub-section shall apply to or in relation to the repayment of any deposit on or after the date on which the

Income Tax (Second Amendment) Act, 1981, receives the assent of the President.

(2) No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall

repay any deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the deposit if-

(a) the amount of the deposit together with interest, if any, payable thereon, or

(b) the aggregate amount of deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be,

the other company or co-operative society or the firm, either in his own name or jointly with any other person on the date of such repayment

together with the interest, if any, payable on such deposits, is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the

amount of such deposit to the savings bank account or the current account (if any) with such branch of the person to whom such deposit has to be

repaid:

Provided further that nothing in this Sub-section shall apply to or in relation to the repayment of any deposit before the date on which the Income

Tax (Second Amendment) Act, 1981, receives the assent of the President.

The above section provides that no branch of a banking company, co-operative bank and no other company or co-operative society or

partnership firm or other person, can repay any deposit made with such entity otherwise than by an account payee cheque or an account payee

draft drawn in the name of the person who has made the deposit. The specific word used in the provision is ''deposit''. In this case, the finding is

that there is no deposit. Section 273B of the Act deals with ''penalty not to be imposed in certain cases''. Section 273B, as on the relevant period,

reads as under:

273B. 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 Sub-section (1) or Sub-section (2) of Section 272A,

Sub-section (1) of Section 272AA or Sub-section (1) of Section 272BB or Clause (b) of Sub-section (1) or Clause (b) or Clause (c) of Sub-

section (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.

The above section provides that if the assessee proves that there is a reasonable cause, he is not subject to levy of penalty. The case of the

assessee is that, the amount received by the assessee is only for the purpose of allotment of shares and it is not a deposit or loan. In this case, the

reasonable cause is that the assessee was under the bona fide belief that the money received is only for the purpose of allotment of shares. Also,

there is no material or evidence or any compelling reason produced by the Revenue to prove that the money received is a deposit or loan. The first

appellate authority as well as the Tribunal have come to a correct conclusion after accepting the explanation offered by the assessee. It is a

question of fact and the order of the Tribunal is not a perverse one. The concurrent finding given by both the authorities below is based on valid

materials and evidence. In the case of Commissioner of Income Tax Vs. P. Mohanakala, , the Supreme Court held that whenever there is a

concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any

error or legal infirmity in the order of the Tribunal so as to warrant interference.

6. In view of the foregoing reasons, we answer the questions in favour of the assessee and against the Revenue. Accordingly, the tax case is

dismissed. No costs.

