
(2014) 07 MAD CK 0027

In the Madras High Court

Case No : Tax Case (Appeal) Nos. 13 to 15 of 2014

DIT (Exemptions)

APPELLANT

Vs

Young Men Christian Association

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 51

Income Tax Act, 1961 — Section 147 158BC 269SS 269T 271

Citation : (2014) 07 MAD CK 0027

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : J. Narayanasamy, Advocate for the Appellant;

Judgement

R. Sudhakar, J.

1. In all these appeals, the following questions of law have been raised :

"(i) Whether the Tribunal was justified in upholding the order of the Commissioner (Appeals) that no penalty is leviable under sections 271D and 271E in a case of cash loan transaction recorded by the Department as a case of undisclosed income subject to tax under section 68 of the Income Tax Act.

(ii) Whether the Tribunal was justified in holding that penalty under section 271D is not leviable on the assessee on the ground of exceptional circumstances in terms of section 273B."

2. The brief facts, insofar as the first issue is concerned, which flows from the case of the Department is that the assessee, to get over certain financial difficulties, borrowed certain amounts and repaid certain amounts for the assessment year 2009-10. The amounts taken by way of cash, according to the Department, was Rs. 1 crore and the amount that was returned was Rs. 50 lakhs. This amount, in the course of original assessment proceedings, was treated by the assessing authority as credit of income from unexplained/unidentified source and is liable to tax under section 68 of the Income Tax Act.

That issue, however, remains as such. Pending the same, the Department issued show-cause notice dt. 13-6-2011, initiating penalty proceedings on the transaction relating to receipt of Rs. 1 crore and payment of Rs. 50 lakhs in the following manner :

"(a) 23-12-2011--In respect of receipt of Rs. 1 crore

(b) 23-12-2011--In respect of payment of Rs. 50 lakhs"

3. There is yet another transaction, where a sum of Rs. 25 lakhs was received from one Meenakshi as loan and, therefore, notice under section 271D was issued for contravention of section 269SS of the Act. The notices were resisted by the assessee resulting in an order being passed in the first case by the Jt. CIT (Exemptions), holding that there is a clear contravention of section 269SS and section 269T liable for penalty under section 271D of the Act in respect of receipt of Rs. 1 crore and section 271E in respect of payment of Rs. 50 lakhs made to third party. In the third case, the authority held that the receipt of Rs. 25 lakhs by cash from one Meenakshi is a violation of section 269SS and, therefore, penalty under section 271D was levied, against which appeals were filed by the assessee before the Commissioner (Appeals).

4. All the three appeals, filed by the assessee, came to be allowed by the Commissioner (Appeals) in the following manner :

"(i) Insofar as the transaction relating to receipt of Rs. 1 crore for the assessment year 2009-10 and payment of Rs. 50 lakhs for the same assessment year is concerned, the appellate authority, placing reliance on the assessment order, where the amount has been treated as undisclosed income and subject to levy of tax under section 68 of the Act, came to the conclusion that the Department having accepted the transaction as one of money coming from unexplained and Unidentified source and, therefore, liable to tax under section 68 of the Act, the provisions of section 269SS will not be attracted.

(ii) Insofar as the amount taken as loan from one Meenakshi is concerned, the CIT, relying upon certain details submitted by the assessee, held that the said amount received should be treated as a genuine transaction and in view of the compelling circumstances, thought it fit that it should not be subject to penalty by invoking the provisions of section 273B."

5. Assailing the order passed by the Commissioner (Appeals), the Revenue preferred a bunch of six appeals before the Tribunal. The Tribunal, on consideration of the materials placed before it, concurred with the views of the Commissioner (Appeals) and dismissed the appeals filed by the Revenue. Aggrieved against the said dismissal, the Revenue is before this Court in these appeals.

6. Heard the learned standing counsel appearing for the appellant and also perused the orders passed by the Tribunal, the Commissioner (Appeals) as well as the assessment orders and the other materials available on record. In this

regard, it will be useful to refer to section 269SS and section 269T and corresponding section 271D and section 271E, which is extracted hereunder :

"269SS. Mode of taking or accepting certain loans and deposits.--No person shall after the 30-6-1984, 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,-

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette :

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and that person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.

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);

(111) "loan or deposit" means loan or deposit of money.

269T. Mode of repayment of certain loans or deposits.--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 loan or 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 loan or deposit if--

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

(b) the aggregate amount of the loans or 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, or other person 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 loans or 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 loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from--

(i) Government;

(ii) any banking company, post office savings bank or co-operative bank;

(iii) any corporation established by a Central, State or Provincial Act;

(iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Explanation.--For the purposes of this section,--

(i) "banking company" shall have the meaning assigned to it in clause (i) of the Explanation to section 269SS;

(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 any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

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 CIT.

271E. Penalty for failure to comply with the provisions of section 269T.--(1) If a person repays any loan or 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 loan or deposit so repaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Jt. CIT."

7. We find from the order of the Tribunal, in the case of transaction relating to receipt of Rs. 1 crore and payment of Rs. 50 lakhs, the Tribunal, having considered the order of the assessing authority that it is a case of unexplained cash receipt and treated as own income of the assessee, which is subjected to tax under section 68 of the Act, held that the question of treating it as transaction in violation of sections 269SS or 269T does not arise as it stands mutually excluded.

8. In this context, it would be useful to place reliance on the decision in *Diwan Enterprises Vs. Commissioner of Income Tax*, wherein the Delhi High Court held as follows :

"That the assessing officer had discarded the theory of the assessee having taken any loan. He accepted the surrender of the amount as income of the assessee. It was open to the assessing officer not to accept the surrender, treat the amount as loan and then to hold the petitioner liable to penalty under section 271D for non-compliance with section 269SS. The assessing officer cannot be permitted to treat the amount of loan as income for the purpose of assessing tax thereon while framing the assessment and at the same time to treat it as a loan for the purpose of section 269SS read with section 271D and subject the transaction to penalty. Such proceedings would be self-contradictory. For non-compliance with the provisions of section 269SS, the genuineness of the transaction as loan was doubted by the assessing officer and so the amount was surrendered by the assessee. The surrender was accepted by the assessing officer as income of the assessee. It ceased to be a loan and, therefore, the very foundation for initiating the proceedings for and levying penalty under section 271D was lost. Sub-section (1) of section 271D begins with the words if a person takes or accepts any loan or deposit. The assessing officer had recorded a finding that the amount of Rs. 30,000 was the income of the assessee. Impliedly he had recorded a finding that it was neither any loan nor a deposit. The question of the provisions of section 269SS having been contravened was then lost in oblivion and could not have rearisen at any subsequent stage or in subsequent proceedings. The penalty imposed under section 271D read with section 269SS cannot, therefore, be sustained."

9. In yet another decision in Commissioner of Income Tax Vs. Standard Brands Ltd., , once again, the Delhi High Court held as under :

"Insofar as the quantum issue is concerned, the Commissioner (Appeals) in a separate order dt. 6-9-2000, came to the conclusion (in para 7.2 of the said order) that the addition under section 158BC of the Act could not be sustained and that the assessing officer could at best have taken action under section 147 of the Act. Accordingly, the addition of Rs. 3 lakhs was deleted without prejudice to the action that the assessing officer may take for taxing this amount in regular assessment proceedings including proceedings under section 147 of the Act."

[Wrong para No. 6 has been reproduced; relevant matter is found in para Nos. 8 and 9 of the judgment--Ed.]

10. The Tribunal, taking note of the abovesaid decisions, accepted the stand of the assessee that there was no justification for imposition of penalty under sections 271D and 271E, as it is not a transaction in contravention of sections 269SS and 269T. In the light of the proposition of law expounded by the Delhi High Court in the above cited decisions, which has been rightly relied on by the Tribunal, we find no reason to take a different view as we find that the reasons of the Commissioner (Appeals), as observed by the Tribunal, justifies a case of undisclosed income at the hands of the assessee subject to tax under section 68 of the Act.

11. Insofar as the loan transaction relatable to the money received from one Meenakshi for a sum of Rs. 25 lakhs is concerned, the Tribunal, after considering the reasons for such a transaction, was inclined to accept the reasoning of the Commissioner (Appeals) that it is a case, where the assessee, under compelling circumstances, had accepted cash loan and, therefore no penalty need be levied by invoking the provisions of section 273B of the Act. In this context, it would be useful to refer to section 273B of the Act, which reads as under :

"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 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) of sections 272BB or sub-section (1) of s. 272BBB 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."

12. The Tribunal, after considering the order passed by the Commissioner (Appeals) and also considering the plea of compelling circumstances for receipt of cash loan in terms of section 273B of the Act, sustained the order of the Commissioner (Appeals), the relevant portion of which is extracted hereunder for

easy reference :

"31. On going through the order of the Commissioner (Appeals), we find that the assessee has obtained cash loan from Smt. Meenakshi, who is an assessee, the identity is proved, the genuineness of the transaction is proved, therefore, it cannot be said that the loan amount of Rs. 25,00,000 is unaccounted income of the assessee. We also notice from the assessment order that the cash loans introduced by the assessee from other than Smt. Meenakshi have been considered as unexplained credits by the assessing officer which shows that the cash loans obtained from Smt. Meenakshi is genuine loan and no such treatment was given to this loan of Rs. 25,00,000 by the assessing officer while completing the assessment. We also find that the assessee was forced to avail cash loans in order to meet the requirements of payments to bank for reducing the credit limit and to honour the cheques already issued. The Department has not filed any evidence to rebut the findings of the Commissioner (Appeals). In the circumstances, we sustain the order of the Commissioner (Appeals) in deleting the penalty levied under section 271D of the Act and no interference is called for."

13. Thus, it is clear from the record that the Commissioner (Appeals) and the Tribunal have gone into the genuineness of the transaction and the reasons attributed by the assessee for obtaining the said loan in view of the compelling circumstances, which is covered by relevant documents to support such a transaction and, therefore, the authorities have rightly interfered with the penalty imposed by invoking the provisions of section 273B of the Act. Such a discretion exercised by the Commissioner (Appeals), which has been confirmed by the Tribunal, in the considered view of this Court, does not warrant interference. Further, this Court is of the considered view that no question of law, much less substantial question of law, arise for consideration in these appeals.

14. For the foregoing reasons, we pass the following order :

"(i) There is no material warranting interference with the order passed by the Tribunal.

(ii) All the appeals fail and the same are dismissed. Consequently, connected miscellaneous petitions are closed."